the weekly Standard

MARCH 6 / MARCH 13, 2006

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HARVARD DUMPS ITS PRESIDENT

PETER BERKOWITZ • JAMES PIERESON

AMERICAN GOTHIC, THEN AND NOW

PAUL A. CANTOR on the life and times of Grant Wood's masterpiece

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THIS IS A COMBINED ISSUE. THE NEXT ISSUE OF THE WEEKLY STANDARD WILL APPEAR IN TWO WEEKS.

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BPA INTERNATIONAL

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More Documents, Please (cont.)

On February 14, the Combating Terrorism Center at West Point released a study of 28 al Qaeda documents captured after 9/11. The West Point study provides an in-depth look at al Qaeda from those inside the organization, including Osama bin Laden. The most important aspect of the study was its accompanying release of the al Qaeda documents. While there are many views about what this new cache of documents means, there is little disagreement over the value of publicly analyzing and debating the documents.

A *USA Today* article notes that the documents "came from a variety of sources and were selected because they show al Qaeda discussions of ideology, tactics, potential operations or training." *Washington Post* columnist David Ignatius pointed to one of the documents for the insights it might provide on the disputed deal to let a United Arab Emirates company manage some U.S. ports. A CNN report discussed the "extraordinary details" in the documents. "Military officials tell CNN they were chilled when they read a document known as the al Qaeda employment contract, which they strongly believe to be authentic." And on it goes.

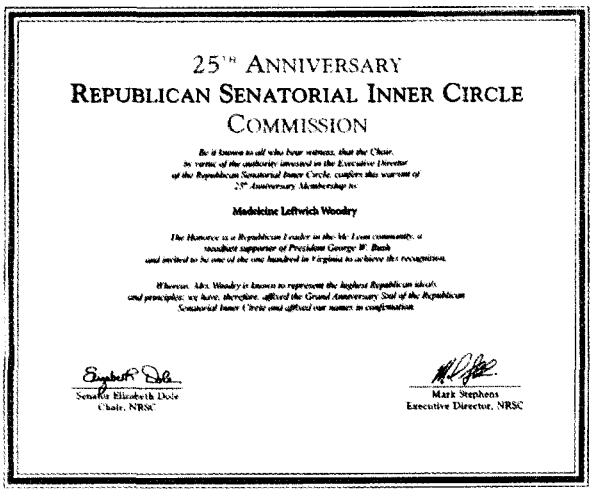
THE SCRAPBOOK thinks they have a point. We'd like to see many more of the documents captured in postwar Afghanistan. And Iraqi documents could be just as valuable in enhancing our understanding of the enemy there. For instance, we know that the former Iraqi regime imported and trained jihadists for years before the U.S. invasion. We know that Saddam's regime organized many elements of the ongoing insurgency long before the war began. We know that the Iraqi Intelligence Service called on its operatives and allies to assassinate Sunni and Shiite clerics and to attack Sunni and Shiite mosques. According to one Iraqi official who read a February 2003 memo from the former director of Iraqi Intelligence, the plan was simple: blame Sunnis for the violence done to Shiites and blame Shiites for the violence done to Sunnis. That document was found in April 2003. Had it been released by now, it might have provided some important context for understanding the mosque attack in Iraq last week.

The U.S. intelligence community has treated the captured documents as if they are little more than a historical curiosity. In fact, for the good of the Americans and Iraqis fighting insurgents in Iraq today, the sooner they are released the better. ♦

Annals of Direct Mail

Many moons ago, THE SCRAPBOOK was enrolled in the junior-year-abroad program of a school that shall remain nameless. But before our year-long scholarly pub-crawl across Europe could begin, a bureaucratic correspondence had to be carried on between the American university and its European counterpart. We noticed that, instead of using our university's usual, tasteful red-on-buff official stationery, these letters went out sporting a gaudy, saw-toothed gold seal, with red and blue ribbons affixed. One day a secretary, pointing to the decoration, whispered to us, "We call this the dago dazzler."

This episode was brought to mind by a direct-mail fund-raising solicitation received last week by a couple of SCRAPBOOK friends: a suitable-for-framing certificate, reproduced here at a much-reduced size, from the National Republican Senatorial Committee. Like the "dago dazzler," it is calculated to impress the rubes and, even by the low standards of direct mail, is spectacularly over-the-top. We should note that our friends are small and irregular donors, but they apparently live in the right Zip Codes.


25TH ANNIVERSARY
REPUBLICAN SENATORIAL INNER CIRCLE
COMMISSION

Be it known to all who bear witness, that the Chair, by virtue of the authority invested in the Executive Director of the Republican Senatorial Inner Circle, confers this warrant of 25th Anniversary Membership to

Madeleine Leftwich Woodry

The Honoree is a Republican Leader in the McLean community, a steadfast supporter of President George W. Bush and invited to be one of the one hundred in Virginia to achieve this recognition.

Wherein, Mrs. Woodry is known to represent the highest Republican ideals and principles, we have, therefore, affixed the Grand Anniversary Seal of the Republican Senatorial Inner Circle and affixed our names in confirmation.

Senator Elizabeth Dole
Chair, NRSC

Mark Stephens
Executive Director, NRSC

Original dimensions: 16" x 13"

Unfortunately not visible on our small scan here is the embossed eagle seal, situated midway between the autopen signatures of Elizabeth Dole and Mark Stephens, commemorating the "Republican Senatorial Inner Circle, 1979-2004." Translation: Hey! Our gimmick is still pulling in the bucks after a quarter century!

Or is it? We couldn't help but wonder if this elaborate mailing is a sign of trouble on the fundraising front. It smacks of trying too hard. Either that, or some of our profiteering friends in the direct mail business are making out like bandits. In addition to the certificate, a nice piece of printing business in itself, the envelope came stuffed with a stiffening piece

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of cardboard, three-page letter, reply envelope, and tissue to give the thing a classy feel. First class postage for all of the above: $1.59. If Nero had sent out direct mail, it would have looked like this. ♦

The Idiocy of the Harvard Faculty

Elsewhere in this issue, James Piereson refers to the Harvard faculty's March 2005 passage of a resolution of no-confidence in President Larry Summers, who announced his resignation last week. Piereson notes that the resolution had an introduction, which was later removed before final passage. That introduction made explicit the infantile leftist agenda of Summers's detractors. It is worth reading in full, and is reproduced below in all its politically correct glory:

While the Faculty gratefully acknowledges Mr. Summers' apologies for remarks minimizing the innate capacities of women and for lapses of respect in his communication with faculty members, the Faculty also wishes to register its dissent from a number of public pronouncements by the President that would otherwise appear to represent us collectively, and to urge limits on the proposed expansion of presidential prerogatives.

Over the past three and a half years, faculty members have discerned in the conduct of President Summers a pattern of aggressive communication and inattention to faculty opinions, both of which are inconsistent with the principles of free inquiry and the democratic management of the Faculty of Arts and Sciences. The Faculty acknowledges Mr. Summers' promise to improve his communication with us, but we remain concerned about the substance of Mr. Summers' apparently ongoing convictions about the capacities and rights not only of women but also of African Americans, third-world nations, gay people, and colonized peoples. We are concerned that Mr. Summers' latest remarks minimizing the innate intellectual capacities of women reflect Mr. Summers' tendency to vocalize his speculations without due regard for either the standards of scholarship or the effect of careless pronouncements, particularly from the president of one of the world's leading universities, on the human beings concerned.

Mr. Summers has demonstrated little concern for his role as the foremost public representative of the University. Yet he has moved to increase the powers of his office significantly, through, for example, the creation of "divisional appointments." For these reasons, and in the spirit of freedom of expression, the assembled faculty members wish officially to register dissent from Mr. Summers' stated opinions regarding the innate capacities of subordinate populations, the wisdom of dumping in third-world nations, the authorized presence on campus of organizations that infringe upon the equal rights of gay people, and the proposition that the criticism of Israeli military policy toward the Palestinians is inherently anti-Semitic.

We, the Faculty, vote to dissent from these positions of Mr. Summers, to demand that they not be employed in the governance of the University or in restricting the free speech of professors and departments, and to halt any further expansion of presidential prerogatives that will facilitate the propagation of these positions. ♦

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Casual

Plagiary, It's Crawling All Over Me

If imitation is the sincerest form of flattery, what is plagiarism? The least sincere form? A genuine crime? Or merely the work of someone with less-than-complete mastery of quotation marks who is in too great a hurry to come up with words and ideas of his own?

Over many decades of scribbling, I have on a few occasions been told that some writer, even less original than I, had lifted a phrase or an idea of mine without attribution. I generally took this as a mild compliment. Now, though, at long last, someone has plagiarized me, straight out and without doubt. The theft is from an article of mine about Max Beerbohm, the English comic writer, written in the pages of the august journal you are now reading.

The man did it from a great distance—from India, in fact, in a publication calling itself "India's Number One English Hindi news source"; the name of the plagiarist is being withheld to protect the guilty. I learned about it from an email sent to me by a generous reader.

Here is the plagiary:

> JE: "Beerbohm was primarily and always an ironist, a comedian, an amused observer standing on the sidelines with a smile and a glass of wine in his hand. G.K. Chesterton said of him that 'he does not indulge in the base idolatry of believing in himself.'"
>
> TP (Tasteful Plagiarist): "Beerbohm was primarily and always an ironist, a comedian, an amused observer standing on the sidelines with a smile and a glass of wine in his hand. G.K. Chesterton rightly observed of him that 'he does not indulge in the base idolatry of believing in himself.'"

In 30 years of teaching university students I never encountered a case of plagiarism, or even one that I suspected. Teachers I've known who have caught students in this sad act report that the capture gives one an odd sense of power. The power derives from the authority that resides behind the word "gotcha." This is followed by that awful moment—a veritable sadist's Mardi Gras—when one calls the student into one's office and points out the odd coincidence that he seems to have written about existentialism in precisely the same words Jean-Paul Sartre used 52 years earlier.

In recent years, of course, plagiarisms have been claimed of a number of authors themselves famous enough to be plagiarized from. The historians Stephen Ambrose and Doris Kearns Goodwin were both caught in the act. The Harvard law professor Laurence Tribe has been accused of the crime. The novelist Jerzy Kosinski, a man who in some ways specialized in deceit, deposited chunks of writing from Polish sources into his books without attribution. Some years ago there was talk of plagiarism in Martin Luther King Jr.'s doctoral dissertation. Schadenfreudians are usually much pleased by the exposure of plagiarism in relatively high places; to discover that the mighty have not fallen so much as cheated on their way up excites many who have never attempted the climb.

I have myself always been terrified of plagiarism—of being accused of it, that is. Every writer is a thief, though some of us are more clever than others at disguising our robberies. The reason writers are such slow readers is that we are ceaselessly searching for things we can steal and then pass off as our own: a natty bit of syntax, a seamless transition, a metaphor that jumps to its target like an arrow shot from an aluminum crossbow.

In my own case, I have written a few books built to a great extent on other writers' books. Where the blurry line between a paraphrase and a lift is drawn—not always so clear when composing such books—has always been worrisome to me. True, I've never said directly that man is a political animal, or that those who cannot remember the past are condemned to repeat it. Still, I worry that I may somewhere have crossed that blurry line.

In the realm of plagiarism, my view is, better a lender than a borrower be. (You can quote me on that.) The man who reported the plagiarism to me noted that he wrote to the plagiarist about it but had no response. At first I thought I might write to him myself, remarking that I much enjoyed his piece on Max Beerbohm and wondering where he found that perfectly apposite G.K. Chesterton quotation. Or I could directly accuse him, in my best high moral dudgeon, of stealing my words and then close by writing—no attribution here to Rudyard Kipling, of course—"Gunga Din, I'm a better man than you." Or I could turn the case over, on a contingency basis, to a hungry young Indian lawyer, and watch him fight it out in the courts of Bombay or Calcutta, which is likely to produce a story that would make *Bleak House* look like *Goodnight Moon*.

Joseph Epstein

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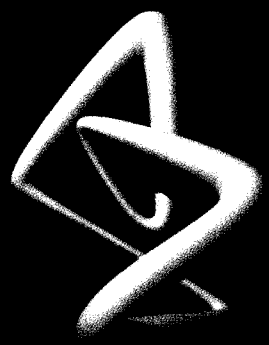
What Does This Stand For?



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Correspondence

Sharia-Free Zone

Beyond expressing my gratitude for the mettle William Kristol showed by printing the Muhammad cartoons ("Oh, the Anguish!" Feb. 20), I must point out that the effectiveness of this global censorship should clearly be evidence that the very right the left falls back on—free speech—repeatedly is that which is most at risk. We are in the midst of a real ideological struggle, and I cherish the freedom to deem the cartoons as trivial as I do caricatures of politicians. The Weekly Standard allowed me this choice.

Greg Menegat
Thousand Oaks, Calif.

Thanks for publishing the cartoons and exposing the phoniness of those within Islam who are inciting the riots. It is a disgrace that the liberal press has cowered when they normally go out of their way to publish outrageous items insulting to other groups.

Tom Benham
Tallahassee, Fla.

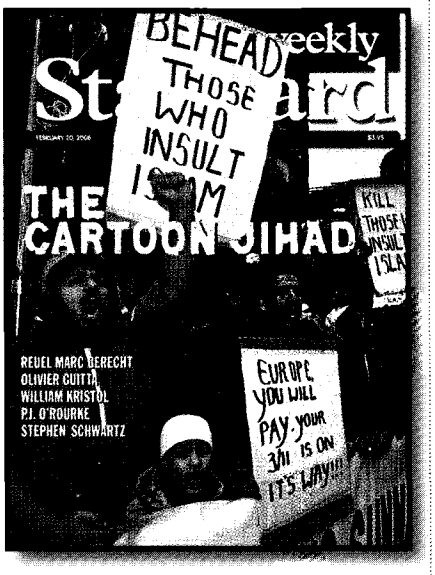
Regarding the Danish cartoon showing a bomb on the head of Islam's Prophet Muhammad: It seems the burning and destruction of embassies and buildings as a response by some Muslims simply gives credence to the point of the cartoonist that Islam has been hijacked by extremist, violent radicals.

Morton A. Klein
New York, N.Y.

Cogitating with Candor

In "The Counterrevolution in Military Affairs" (Feb. 6), Ralph Peters provides a defining example of the quality and clarity of The Weekly Standard. Although conservative, you nonetheless demonstrate a desire to do much more than gratuitously stroke current U.S. policy. This should show everyone, liberal and conservative, that the focus must be on the real enemy and that a positive contribution can come from any corner. The left long ago confused freedom of expression with destructive verbiage totally devoid of anything beneficial toward our side's cause. It is akin to tackling someone wearing the same jersey.

Michael S. Pappas
St. Louis, Mo.



Ralph Peters avoids the elephant in the room regarding people of "intense faith." Apparently he was fearful of addressing the relevance of what one believes to be the disposition of God toward humans and what it takes to have assurance of your God's approval. Similarly, the example of the life of the central figure of a religion also has profound effects on the actions and attitudes of the adherents of any particular religion. Perhaps the recent riots over the Danish cartoon have made Peters reluctant to enter into that discussion, and I cannot much blame him. That said, by not making this distinction Peters has done a disservice to the very numerous people of "intense faith" who find the actions of suicide bombers indefensible.

David Dulak
Omaha, Nebr.

Finding Forests

In "Blooded by Blair" (Jan. 23) Simon Heffer writes, "Agriculture in England is suffering terribly because of such ignorance about how the countryside works, and what it is actually for." Substitute "Forestry in the United States" for "Agriculture in England," and you have a parallel tragedy: the mismanagement of one of our nation's most valuable resources. The highly urbanized culture of California, for example, is unable to comprehend the significance of its own forests to the well-being of its rural economy. We export our demand for wood and paper products to Canada, Chile, New Zealand, and elsewhere, thereby compelling those countries to overutilize their resources so that we may underutilize ours. Consequently, 80 percent of our forest products are imported while our forests burn as a result of being overly dense.

Timothy La Farge
San Francisco, Calif.

• • •

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We don't have all the answers yet, but we understand that our responsibility is not just to discover and provide life-saving medicines, it's also to educate — to work together to enhance your health, your family's health and the health of your community. That's what AstraZeneca stands for.

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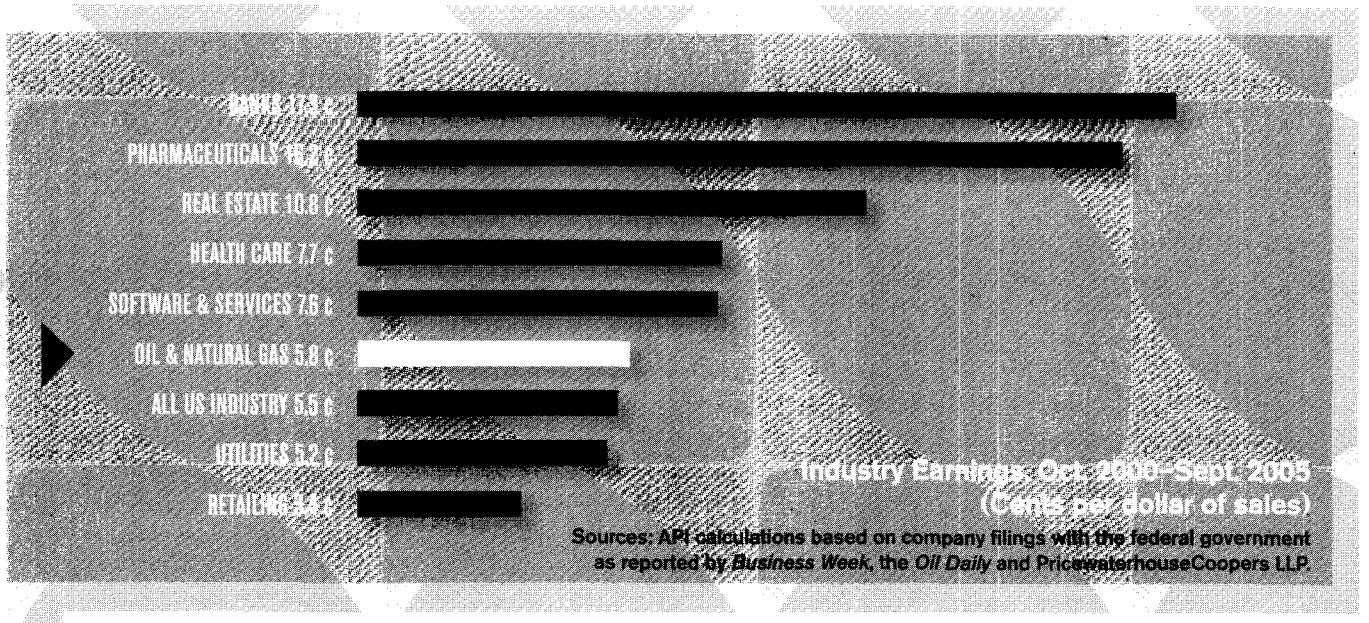

Straight talk on earnings

"Oil company earnings are too high."

That's the word on Main Street, for sure. But on Wall Street, there's a somewhat different perspective on oil industry earnings.

What many may find surprising is that, on average over the past five years, the profitability of America's oil and natural gas industry is far less than many other major industries, like banks, pharmaceuticals and real estate.

Part of the explanation is that it costs a lot just to operate an oil, refining and natural gas company. Ours is a competitive, high-technology and engineering business of massive scale that produces and sells commodities. It costs billions of dollars to explore for, produce, refine and distribute the products consumers need.

It requires billions more dollars to maintain the delivery system necessary to ensure a reliable supply of energy and to make sure it efficiently gets where it needs to go: to you, our customers.

We're committed to making the necessary reinvestments to ensure our nation has a stable and reliable supply of energy today and tomorrow.

A Message From

America's Oil & Natural Gas Industry

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the weekly Standard

The Long War

Demagogues to the right of them, appeasers to the left of them, media in front of them, volleying and thundering. Can the Bush administration continue to charge ahead? Does it have the will—and the competence—to lead the nation for the next three years toward victory in the long war against radical Islamism?

From Copenhagen to Samara, the radical Islamists are on the offensive. From Tehran to Damascus, the dictators are trying to regain the upper hand in the Middle East. From Moscow to Beijing, the enemies of liberal democracy are working to weaken the United States. Across the world, the forces of terror and tyranny are fighting back. Are we up to the challenge?

It's not clear that we are. Many liberals, here and in Europe, long ago lost the nerve to wage war—or even to defend themselves—against illiberalism. Parts of the conservative movement now seem to be losing their nerve as well. In response to an apparent clash of civilizations, they would retrench, hunker down, and let large parts of the world go to hell in a hand basket, hoping that the hand basket won't blow up in our faces.

Remember: The United States of America and its allies—regimes that seek to embody, or at least to move towards, the principles of decent, civilized, liberal democracy—did not seek this war. But we are at war, and we could lose it. Victory is not inevitable.

Does that make Bush-supporting, liberal-democracy-promoting, Iraq-war-defending neoconservative "Leninists," as Francis Fukuyama has recently charged? No. Does it mean we believe—as Fukuyama defines Leninism—that "history can be pushed along with the right application of power and will"? Does it mean that history does not automatically move in the right direction, that justice does not necessarily or easily prevail? Yes.

It would be nice to believe, as Fukuyama does, that "a long-term process of social evolution" is under way that will inevitably produce liberal democracy. It would be nice to enjoy the comfortable complacency of a historical determinism that suggests—as Fukuyama has it—that what we most need to do is to embrace a "good governance agenda" on behalf of a long-term process of "democracy promotion" that "has to await the gradual ripening of political and economic conditions to be effective."

Indeed, it would be nice if we lived in a world in which we didn't have to take the enemies of liberal democracy seriously—a world without jihadists who want to kill and clerics who want to intimidate and tyrants who want to terrorize. It would be nice to wait until we were certain conditions were ripe before we had to act, a world in which the obstacles are trivial and the enemies fold up. Unfortunately, that is not the world we live in.

To govern is to choose, and to accept responsibility for one's choices. To govern is not wishfully to await the end of history. To govern is not fatalistically to watch a clash of civilizations from the sidelines.

As Marshall Wittmann of the Democratic Leadership Council observed last week, "We are in the midst of a jihadist offensive. The bombing of [Iraq's] Askariya Shiite Shrine is another indication of the world-wide jihadist offensive against the West. From the cartoon jihad to the Hamas victory to the Iranian effort to obtain nuclear weapons to the attempt by al Qaeda to foment an Iraqi civil war—our enemy is taking the initiative. And the West is on its heels."

The Bush administration leads the West. If the West seems to be on its heels, it is because the administration seems to be on its heels. The fact that the left is utterly irresponsible, and some of the right is silly, is no excuse.

Wittmann continued, "Many mistakes have been made since 9/11. But at the end of the day, we should recognize that we are all Americans and part of the West that is under assault by a truly evil foe. Our bravest are on the front lines in this war. The least we can do at home is to demonstrate some moral seriousness that the moment demands."

Moral seriousness in this case means political seriousness. Insist on going ahead with the ports deal so that Arab governments who have stood with us in the war on terror are not told to get lost when one of their companies acquires port management contracts in the United States. Make a real effort to destabilize Ahmadinejad in Iran. Do what it takes to defeat Zarqawi and secure Iraq. Stand with Denmark, and moderate Muslims, against the radical mob. This is no time for dishonorable retreat. It is time for resolve—and competence. After all, it would be most unfortunate if the administration summoned its nerve and charged ahead—only to meet the fate of Tennyson's Light Brigade!

—*William Kristol*

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Summers's End

Too bad Harvard's president wouldn't take his own side in a quarrel. BY PETER BERKOWITZ

Larry Summers

Getty Images / Joe Raedle

THE SIGNIFICANCE OF Lawrence Summers's resignation under fire as president of Harvard University has been widely misunderstood. Oozing sympathy for a beleaguered and aggrieved Harvard faculty, the *Boston Globe* editorial page argued that because he was "arrogant" and "brusque," in short a "bully," Summers was "losing the ability to be effective" and so it was "sensible," and in the interests of all, for him to step down. A sympathetic editorial in the *Washington Post* portrayed Summers as a martyr, a foe of "complacencies and prejudices" who was forced to fall on his sword by a "loud and unreasonable" minority. An angry *Wall Street Journal* editorial, which colorfully decried "a largely left-wing faculty that has about as much intellectual diversity as the Pyongyang parliament," portrayed Summers as a victim whose apology, "in the wake of his 'gender' comments," failed "to placate his liberal critics."

Summers's ouster certainly demonstrates—as Harvard professor Ruth Wisse observed in a *Wall Street Journal* op-ed and as another Harvard dissenter, Alan Dershowitz, argued in the *Boston Globe*—the power at Harvard of a faction within the faculty of arts and sciences for whom scholarship is politics by other means and who aggressively practice the politics of resentment that they loudly preach. Yet they could not on their own have brought down Summers, whose intellectual credentials as a brilliant economist and whose political credentials as former secretary of the treasury in the Clinton administration are impeccable.

Summers's vociferous faculty critics—those who voted no confidence in him last year represent only about 25 percent of the arts and sciences faculty—needed, in the face of their scurrilous attacks, the silence of the vast majority of the rest of the Harvard arts and science faculty as well as the silence of the eight other faculties at Harvard.

Those attacks, and the deafening silence with which the vast majority of Harvard greeted them, followed Summers's comments in January 2005 to a closed-door, off-the-record session of a National Bureau of Economic Research conference on diversifying the science and engineering workforce. Summers suggested that one of three "broad hypotheses" that need to be considered to explain and correct the relative dearth of women in science and engineering was the possibility of innate differences in the sexes in their aptitudes for highly abstract thought. Summers's faculty critics demanded that he publicly recant and confess his transgression. Regrettably, Summers obliged by offering public apologies not once, not twice, but no fewer than three times—a fact that some of his supporters regret, and that even his critics could not bring themselves to praise. A certain graciousness he displayed under fire—perhaps he was not such a bully after all—went unnoticed.

It must be emphasized that Summers had no good reason, none whatsoever, for apologizing, and that those of his advisers and members of the Corporation—the small body of seven movers and shakers who run Harvard and who alone have power to hire and fire the university president—who counseled him to do so ill-served him and the university over which he presides. Apologies are appropriate when you have said something inconsiderate, vulgar, or ignorant. Summers's remark was none of these.

It was part of a talk (available at *www.president.harvard.edu/speeches/2005/nber.html*) in which he displayed a subtle appreciation of the problem, a clear sense of his own fallibility, and an eagerness to be corrected by better arguments and more refined data. Summers contended that the most likely reason talented women were underrepresented in sciences and engineering faculties was the choices they made against a career option that involved up to 80 hours a week in the laboratory while in their twenties and thirties, low pay, and the probability of not obtaining job security until age 40. The least likely reason, he thought, was overt discrimination against women. And in the middle were ques-

Peter Berkowitz teaches at George Mason University School of Law and is the Tad and Dianne Taube senior fellow at Stanford's Hoover Institution. Before Summers's presidency, Berkowitz was denied tenure at Harvard, which he litigated unsuccessfully on procedural grounds, losing his case in the Supreme Judicial Court of Massachusetts in September 2003.

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tions about the natural aptitudes of the sexes and about the ways in which girls are socialized differently than boys. He related these questions to data showing that "on many, many different human attributes—height, weight, propensity for criminality, overall IQ, mathematical ability, scientific ability—there is relatively clear evidence that whatever the difference in means—which can be debated—there is a difference in the standard deviation, and variability of a male and a female population."

In 2005, almost 40 years after Harvard College began admitting women, after women have risen to head several Ivy League universities, to lead major corporations, to serve as governors and as secretary of state, understanding why women continue to be represented less well in some fields than others, and generally underrepresented at the top of many fields, is a complicated project. In undertaking it, any sensible person would inquire, as did Summers, into the actual choices women make, the sexes' natural aptitudes and socialized differences, and overt discrimination. To denounce the very outlining of the essential features of such an inquiry is anti-intellectual in the extreme. Alas, Summers's decision to acquiesce in the denunciation and to serve up one apology after another not only legitimated but also emboldened the forces of darkness and reaction. And to earmark $50 million (as Summers subsequently did) for the creation of two more task forces to nurture and promote women at Harvard in advance of the very inquiry Summers himself insisted was necessary to determine the roots of the problem rewards intellectual thuggery and provides fabulous incentives for further intimidation of freedom of speech and thought on campus.

Some seasoned observers, both inside and outside Harvard, while distancing themselves from those who attacked Summers for the content of his comments, condemned his lack of prudence in making them. Just as federal judges are prohibited from speaking about pending cases, and CEOs try not to take controversial stands that might anger customers or discomfit employees, so too, it was said, a university president has an obligation to hold his tongue on controversial subjects to avoid offending important constituencies within the university. Or put more simply, a prudent university president would have better understood the limits on speech imposed by the self-appointed enforcers of political correctness.

Prudence indeed must be given its due. And wise men and women understand the limits of propriety and what their audience can bear. But a university president has special responsibilities not shared by federal judges and corporate CEOs. The aim of a university is not impartial interpretation of the law or the making of profit for shareholders but transmitting knowledge and pursuing truth. For Summers, who is also a professor in the economics department, to have accepted the NBER invitation and not mention the possibility of the relevance of natural differences between the sexes, or to have declined the invitation for fear of the fallout from mentioning it, would also have betrayed the principle of free intellectual inquiry.

Other observers maintained that the problem was that Summers spoke beyond his field of scholarly expertise: After all, he is an economist and his comments dealt with the biological bases of behavior. This is even less persuasive. The very idea of a liberal arts college presupposes the possibility and the desirability of scholars and students reaching out across disciplines to integrate knowledge.

In addition, some have denied that Summers's comments were at the center of the storm that ended his presidency. Count Summers among them. After his resignation, he told reporters that the causes of his rift with faculty were complex and they should not be reduced to a single incident. No doubt. But one of his leading critics, sociology professor Mary Waters, maintains the comments provided a strategic opportunity, and she would know. As she told the *Boston Globe*: "When the news about his speech on women broke,

photo: Francis Fukuyama

Author and Professor

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people began talking to each other, and they began to realize how widespread his behavior was. Sharing information increased everyone's disapproval."

It was never a secret that Summers is socially clumsy and does not suffer fools gladly. And it was clear that he had alienated various parts of the faculty by telling star African-American studies professor Cornel West in a private conversation that West should devote more time to scholarship and should cooperate in the faculty-wide effort to combat grade inflation; by expressing his support for ROTC; by speaking in favor of patriotism; and by defending Israel against selective and one-sided criticism. But it was his comments about women in the sciences he delivered in a collegial setting, in an effort to explore ways to improve women's representation at the university, that became the public symbol of the rift between Summers and the faculty. And it is his handling of that affair that will be longest remembered and have the largest impact.

What should Summers have done? From the beginning he should have stuck to his guns, and failing that, he should have come to his senses after summer vacation last year and uttered words similar to those supplied by attorney Harvey Silverglate, writing in the *Boston Phoenix* two days after Summers's resignation:

> This was about more than whether I speculated in an area in which I am not a recognized expert. It was about whether the modern American academy is any longer a safe haven for true diversity of thought and opinion, and whether some subjects are so toxic to a subsection of the academic left that they are taboo. We extol the virtues of diversity in a wide variety of programs—including mandatory freshman orientation and "sensitivity training" programs that come perilously close to being exercises in thought-reform—but we penalize diversity of knowledge and opinion. I was not immune to these forces, as exhibited in my shameful attempt to buy off my critics with a $50 million bribe for a laundry list of senseless initiatives compiled by two women's task forces that will do little more than further expand an already bloated administrative structure. I hereby declare that initiative dissolved. The unspent money will go to endow a much-needed and long-overdue chair in academic freedom at Harvard Law School.

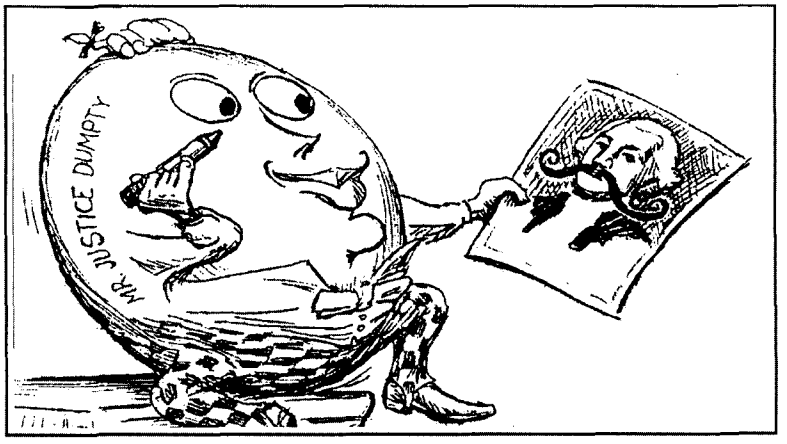
The utterance of these or some such words might not have been the height of prudence. But Summers could have made himself a hero. Public opinion was with him last year when the story first broke after MIT biologist Nancy Hopkins told the *Boston Globe* that she walked out of the private, invitation-only session because, if she hadn't, "I would've either blacked out or thrown up." Imagine a no-nonsense Summers tactfully refraining from pointing out the 19th-century Victorian female stereotypes in which Hopkins was trafficking, while remarking on the oddity of a biologist protesting the consideration of biological factors as part of an explanation of human behavior.

Alas, the Harvard establishment already seems to be drawing the wrong lesson from Summers's resignation. Summers critic Peter T. Ellison, a professor of anthropology and former dean of the Graduate School of Arts and Sciences, told the *New York Times*: "I think the repair will be virtually instantaneous. I think the problem has been essentially President Summers himself."

In fact, the problem was that Summers was untrue to his sound instincts about the university's mission and unable or unwilling to articulate the principles that should organize and refine those instincts. Despite his considerable gifts, the bright promise when he was appointed in 2001, his evident joy in Harvard's remarkable students and his varied achievements during his five years at the helm, Summers's failure to stand up for himself and for the principle of free inquiry when both were under assault—indeed, his collaboration by means of public acts of abasement and contrition before those who would cut off speech and research in order to protect their own tender sensibilities and political agendas—leaves Harvard more enfeebled and more confused about its mission than when he arrived. ♦

THE PROBLEM

OUR IMPERIAL JUDICIARY



When *I* use a word, it means just what I choose it to mean—neither more nor less.

HUMPTY DUMPTY

EXPLAINING TO ALICE "WHICH IS TO BE MASTER"

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Will the Hammer Fall?

Tom DeLay faces a surprisingly strong primary challenge. BY MATTHEW CONTINETTI

Houston

THE WAY TOM CAMPBELL tells it, about two weeks ago he was standing outside the Ft. Bend Chamber of Commerce in Sugarland, Texas, talking to a reporter from the *Globe and Mail*, when a local official approached him, shook his hand, and said, "You got mondo *cajones*."

Campbell is one of four candidates running for the Republican nomination in Texas's 22nd Congressional District. The open primary—in which Democrats and Independents may also vote—is March 7. The frontrunner in the race is Tom DeLay, the former House majority leader, conservative icon, and one of the most effective and feared politicians in American history. DeLay has represented this district—which comprises his native Houston suburbs to the southwest, NASA country to the east, and Galveston to the southeast—since 1985. To challenge him is to invite failure.

But maybe not this time. Thanks to a combination of factors, DeLay's political future is as uncertain as it's ever been.

Recently, political analyst Stuart Rothenberg issued a list of the ten most vulnerable House incumbents. At the top was Ohio Republican congressman Bob Ney, whose relationship with Jack Abramoff—the lobbyist who in January pleaded guilty, in two separate investigations, to five counts of mail fraud, wire fraud, tax evasion, and conspiracy—has exposed him to the threat of a federal indictment.

Matthew Continetti is a staff writer at THE WEEKLY STANDARD *and author of the forthcoming* K Street Gang *(Doubleday).*

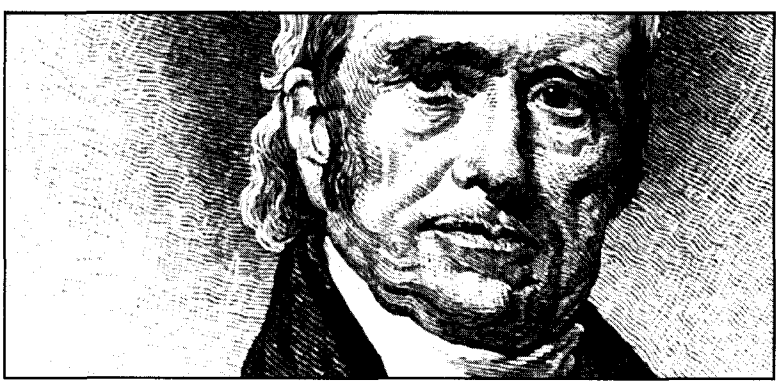
DeLay was second on Rothenberg's list. He, like Ney, had a decade-long relationship with Abramoff. He, like Ney, had staffers who went on to work for the lobbyist, among them Michael Scanlon, Abramoff's former partner, who pleaded guilty last November to related charges. DeLay himself is under indictment for money-laundering, a charge brought against him by Travis County District Attorney Ronnie Earle. DeLay denies the charges, which led to his resignation as majority leader last fall, and is awaiting trial. Back in Washington, the House Ethics Committee has admonished DeLay more times than any other member of Congress.

Even if DeLay, who declined to be interviewed for this article, wins the primary—still the most likely outcome—he faces a considerable obstacle in the fall. That obstacle is Nick Lampson, the Democrat who, before he was defeated in 2004, served four terms as the congressman from Texas's old 9th District. It may seem fantastic to imagine that a Democrat would win in a heavily Republican district that DeLay himself helped design. But winds of change are beginning to stir. In 2004, DeLay spent over $3 million against a little-known Democratic opponent and still took only 55 percent of the vote, his smallest margin of victory in over a decade.

In 2004, President Bush outran DeLay by nine points. This year, the Democratic Congressional Campaign Committee, headed by Illinois congressman Rahm Emanuel, will ensure that a flood of money pours

THE SOLUTION

A FAIR CONSTRUCTION AMENDMENT



There is a fair construction which gives to language the sense in which it is used, and interprets an instrument according to its true intention.

JOHN MARSHALL

CHIEF JUSTICE OF THE UNITED STATES

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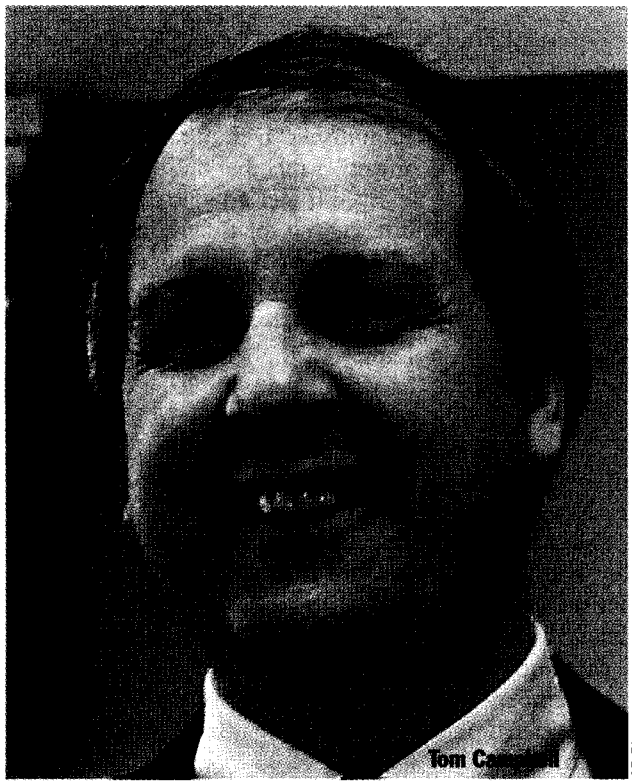
Tom Campbell

AP Photos

into Lampson's coffers. And Democratic charges of a GOP "culture of corruption" will continue to sound as long as DeLay is in Congress.

"Exhibit A in their 'culture of corruption' is Tom DeLay," Tom Campbell told me over dinner last week. He is 51 years old, has been married 28 years, and has five children. A Mormon, he was born in Salt Lake City—his father was originally from El Paso—and went to Brigham Young University. In 1988, he worked on George H.W. Bush's presidential campaign. When Bush won, Campbell became the general counsel for the National Oceanic and Atmospheric Administration, or NOAA.

In 1992, Campbell settled in Texas, where he practices law. For years, he voted for DeLay. In 2004, however, pulling the lever for the then-majority leader, Campbell resolved never to vote for him again. What he knew of DeLay's ethical record troubled him. In 2005, when the Abramoff scandal took shape, Campbell's suspicions were confirmed and broadened. Earlier this year, he declared his own candidacy.

Chris Homan, DeLay's campaign manager, dismisses the challenge. The outcome of the race, he told me, is simple: "We win." Campbell has been "utterly absent" from Republican politics in Texas, Homan said. He has "no name recognition," "very little money," and "no support" from the party structure. "He basically has his church," Homan went on, referring to the national Church of Jesus Christ of Latter-day Saints.

Recently, Campbell held a fundraiser in Utah. The DeLay camp attacked him for raising money outside of Texas. But Campbell's campaign chairman, Michael Stanley, a Houston lawyer, laughed the attack off and said that if anyone should be criticized for spending too much time outside of Texas, it is DeLay. "It just shows you they're worried," Stanley said of the attack. "We're neck and neck." (A Republican, Stanley is the law partner of former Democratic congressman Chris Bell of Texas, who filed the initial ethics complaint against DeLay in 2004, and who is currently running for governor.)

Stanley and Campbell point to internal, and unscientific, polling the campaign has conducted among the district's registered Republicans. The polls show that Campbell has, and is gaining, support. Other, more scientific polls speak to DeLay's weakening hold on his district. In January, CNN-Gallup found that 52 percent of those surveyed in the 22nd District would vote against DeLay. That result tracks with those of John Zogby, who found last year that 45 percent of voters in the district would vote for someone else if they had the chance. When I asked what the DeLay campaign's polling showed, Homan said, "I never do numbers."

Instead, DeLay's campaign stresses loyalty, power, and pork. One day last week, at the University of Houston Hilton, in front of an audience of about 60 supporters, 12 members of the state Republican congressional delegation—there are 21 Republicans in all—gathered to endorse DeLay. Some of the congressmen on the podium owed their political careers to DeLay, who orchestrated the controversial 2003 Texas gerrymander that increased the number of Republican representatives. Later this year, the U.S. Supreme Court is expected to rule on the legality of that plan, which was largely responsible for the historic GOP pickup of House seats in the 2004 elections.

DeLay's camp also touts the endorsement of key organizations like Texas Right to Life and the U.S. Chamber of Commerce, as well as, according to a press release, "more than 100 local officials." There are sound reasons for such loyalty. "We ushered in the surge of Republican politics," DeLay told the crowd at the University of Houston. He is right. After the 1982 elections, there were 4 Republican representatives from Texas. After 1984, when DeLay was first elected to Congress, there were 10. After 2004, there were more than 20. Tom DeLay laid the groundwork for the Republican realignment of his state.

Today his concerns are more material. In 2005, DeLay raised over $3 million, though both Americans for a Republican Majority, his political action committee, and his legal defense fund are in the red. He advertises his ability to allocate money as a symbol of his power in Washington. His campaign continually points to the billions of federal dollars that DeLay has funneled to the 22nd District over the years. "Look at all the work he's done," said one of his supporters at the University of Houston. "If they could just find out all he's done," she said, things would be different.

But DeLay's power is waning. In January, when Abramoff pleaded guilty, DeLay said he would no

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longer attempt to regain his leadership post, a possibility he had left open since his resignation last fall. His preferred replacement, majority whip Roy Blunt of Missouri, lost to Ohio congressman John Boehner. Bereft of influence, DeLay took a recently vacated seat on the House Appropriations Committee. The previous occupant was California Republican Randy "Duke" Cunningham, who resigned from Congress last year after his conviction on bribery charges.

In Houston, the name on everyone's lips is Ronnie Earle, whose indictment of DeLay many Republicans view as petty, partisan, and without merit. Rarely is the name Abramoff even mentioned. When I asked one Republican voter here about the lobbyist, he said, "Well, he gave to Democrats too." Another said that since DeLay has not been indicted in the Abramoff probe, the scandal is a nonissue. Judge Robert Hebert, a Republican, told me, "The folks who know Tom give him the benefit of the doubt where Abramoff is concerned."

Yet there is little doubt that DeLay, like many on Capitol Hill, is deeply worried about what Abramoff might tell the Justice Department. In 1997, on a lobbyist-paid junket to the Commonwealth of the Northern Mariana Islands, DeLay called Abramoff one of his "closest and dearest friends in Washington." And in a recent interview with Pat Robertson's CBN News, DeLay said, "Abramoff was my friend," before adding, "I should not be held responsible for his actions. I treated him legally and ethically. I've done nothing wrong in my relationship with him. . . . I had no idea what was going on, on the other side."

On February 6, however, DeLay sent a letter to supporters that tells a different story. The idea that Abramoff "was a close friend who wielded influence over me is absolutely untrue," DeLay writes. "The reality is, Jack Abramoff and I were not close personal friends." He continues, "I met with him only occasionally, in fact less frequently than numerous others who brought issues before Congress—never did he receive preferential treatment."

Tom DeLay

Reuters Photo Archive

The letter reviews all the accusations against DeLay. It is nine pages long. Ronnie "Earle's charges are about partisan politics . . . plain and simple." The overseas trips he took with Abramoff, DeLay writes, "were properly sponsored and paid for by either the National Center for Public Policy [Research] or the government of the Northern Marianas." But this is a positive, and inaccurate, gloss on the available evidence, which shows that Abramoff planned, organized, and paid for the trips through a variety of shells, sometimes picking up expenses himself.

DeLay's incumbency, and Tom Campbell's challenge, raise two questions about our contemporary politics. One concerns the ethical standard to which voters hold their representatives, and asks whether all accusations of unseemliness can be written off as mere partisan attacks. The other concerns the nature of today's GOP, and asks whether the party has lost its reformist bearings and sidled too close to special interests.

"Principle is more important than power," Tom Campbell told me. "Mr. DeLay has gone to K Street and exchanged our principle for power. He's bartered. When you sell principle for short-term victories, you lose in two ways. Your short-term victories fall apart, and you set a horrible example for the next generation. We can choose power and lose power, or we can choose principle and maintain power."

He spoke quietly. "You don't beat an incumbent," he said. "An incumbent falls under his own weight." ♦

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Losing Friends and Influence

President Bush misjudges immigration and the ports issue. BY FRED BARNES

LIKE FEW PRESIDENTS before him, President Bush was poised for a consequential and potentially quite successful second term. It hasn't worked out that way (so far). Bush made one strategic error in 2005, guessing wrongly that the country was adult and serious enough to reform Social Security. Now he faces at least two immediate challenges: immigration and the Dubai ports flap.

Let's start with immigration, which the Senate is slated to take up in late March. On immigration, Bush is not a conventional conservative or any other kind of conservative. His instinct is to sympathize with immigrants. Bush believes that whether they come to the United States legally or illegally, they come for the right reasons, chiefly for economic opportunity and the chance to shape their own destiny in life.

This has put the president deeply at odds with most Republicans in Congress and the army of conservative talk radio hosts and their listeners around the country. They regard Bush as a slacker on immigration. Their primary aim is to tighten security along the border with Mexico. And the legislation that passed the House last December would do exactly that, partly by erecting a 700-mile wall.

Bush had little influence in the House debate, though he wound up endorsing the measure. His mistake was having proposed in 2004, as his first major immigration initiative, a program to allow illegal immigrants to work legally in this country. Most Republicans and conservatives want stepped-up border security to come first. They're skeptical, at best, about a "guest worker" program.

Bush invited members of Congress and his cabinet, plus leaders of Hispanic groups, to his speech at the White House in January 2004 calling for more immigration into the United States. "The citizenship line . . . is too long and our current limits on legal immigration are too low," he said. But he devoted most of his address to illegal immigrants.

"Out of common sense and fairness, our laws should allow willing workers to enter our country and fill jobs that Americans are not filling," he declared. "We must make our immigration laws more rational and more humane. And I believe we can do so without jeopardizing the livelihoods of American citizens." His plan would "offer legal status, as temporary workers, to the millions of undocumented men and women now employed in the United States and to those in foreign countries who seek to participate in the program and have been offered employment here."

Note the size of the program Bush envisions: millions. It could conceivably cover all the illegal immigrants now living in America. This, of course, enrages Bush's Republican and conservative critics on immigration and makes them all the more dubious of his plans and of him.

How could this adversarial relationship on immigration have been avoided? "If we had to do it again, we probably would lead with enforcement," a White House official said. In other words, soften up the immigrant-bashers with dramatically increased border security and then, and only then, seek a temporary worker program in a year or two. That might have succeeded.

As things now stand, the president's hopes rest with the Senate. His strategy is to get senators to include a modest guest worker program in their bill—a program that could be expanded later. To get the House to accept it, the legislation would be larded with strong enforcement provisions. Who knows? This might work.

On the Dubai ports deal, the failure at the White House was in not seeing political trouble on the horizon. Foreign business deals involving American national security that are approved by the Committee on Foreign Investments normally draw little media or political attention.

But the purchase by a Dubai firm of the British company that manages terminals in six U.S. ports did. In fact, attacks on the deal for supposedly putting America's national security in jeopardy continued for more than a week before the White House responded. It had not consulted members of Congress about the deal beforehand.

The White House was firm and conciliatory in defending the deal but also tardy. The demagoguery on Capitol Hill had gotten out of hand by the time Bush intervened. Most of the criticism focused on the notion that an Arab country with past al Qaeda ties would be in charge of security at the six ports.

This isn't true. Security would remain in the hands of the U.S. Coast Guard and Customs Service. And the personnel operating the ports would be the same. Only the company owning the terminals would change.

But the United Arab Emirates, of which Dubai is part, was the home of two 9/11 terrorists and banks there had transferred money to al Qaeda. This alone was sufficient to bar the deal for what seemed like most of Congress. Bush countered that the UAE had become a full-blown ally in the war on terrorism since 9/11.

The surprise in all this and the most worrisome aspect for the White

Fred Barnes, executive editor of THE WEEKLY STANDARD, *is the author of* Rebel-in-Chief, *published by Crown Forum.*

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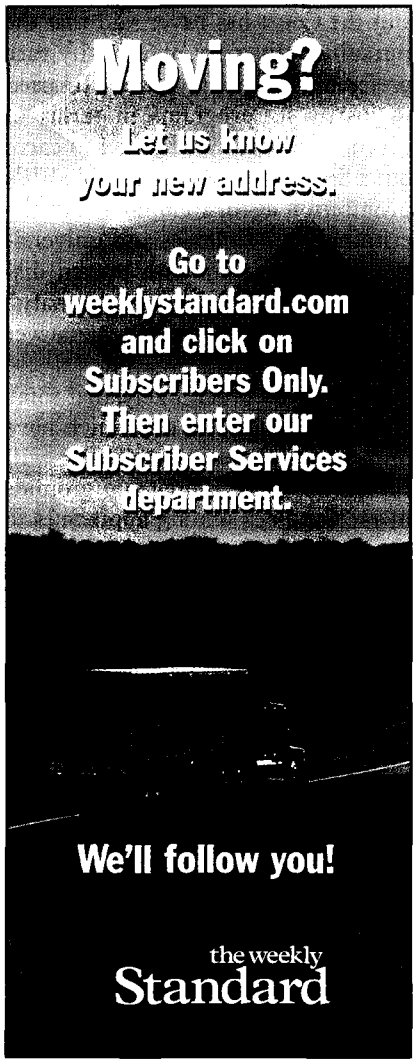
House was the eagerness with which congressional Republicans broke into revolt against Bush. Without checking with Bush or his aides, congressional Republicans, including Senate Majority Leader Bill Frist and House Speaker Dennis Hastert, denounced the deal publicly and insisted it be reconsidered or blocked.

The revolt showed that Bush's strength in Congress has significantly eroded as he begins his sixth year as president. In effect, his Republican base is no longer secure.

One thing could revive his standing among Republicans and salvage his clout on Capitol Hill: a Republican triumph led by Bush in the midterm election this fall. He did this before in 2002. But it was a long shot then, as it is now. ♦



A Defeat for the Diversity Mongers

The Justice Department moves against race and sex favoritism on campus. BY TERRY EASTLAND

IN HER OPINION SUSTAINING the use of race in admissions in the 2003 University of Michigan Law School case, Justice Sandra Day O'Connor spoke of the "deference" owed to institutions of higher education as they make "complex educational judgments." In the three years since the former justice wrote that opinion, the case for such deference has been seriously eroded by the discovery of educational judgments involving race and also sex that, however complex you might suppose them to be, are plainly against the law.

Hundreds of colleges and universities, it turns out, maintained programs —summer internships, scholarships, and paid teaching fellowships—for which students of only a certain race or ethnicity or sex were eligible. These were not, it should be emphasized, programs that on their face were open to all students but which then used quotas or disguised preferences to discriminate in favor of certain students and against others. No, these were programs from which you were flatly excluded if you were of the wrong race or ethnicity or sex.

The good news is that most such programs (including at Princeton, MIT, Cornell, and Tufts) have now been opened to everyone. Administrators for the most part undertook the revisions upon advice from their lawyers, who realized (often as a result of letters summarizing the pertinent law from the Center for Equal Opportunity's general counsel, Roger Clegg) that their own programs, unchanged, could not survive legal challenge.

Terry Eastland is publisher of THE WEEKLY STANDARD.

In a few cases—typically where administrators overrode the advice of their lawyers—the federal government stepped in, with the Education Department's Office for Civil Rights using its authority under Title VI of the Civil Rights Act to insist (to schools receiving federal funds, as almost all do) on compliance with that law. Title VI provides that no one, on the grounds of race or sex, can be "excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

February brought a new development in this story when the Justice Department's threat of a lawsuit against Southern Illinois University resulted in a consent decree under which the school may no longer restrict paid fellowship programs to students (undergraduate, prospective graduate, and postdoctoral) of certain racial and ethnic backgrounds or sex. Three programs in particular were described in the agreement: the Proactive Recruitment of Multicultural Professionals for Tomorrow fellowship known as PROMPT, which was open only to African Americans, Latino/Hispanic Americans, Asian Americans, and Native Americans; the Bridge to the Doctorate fellowship known as BRIDGE, which was open only to Hispanics, African Americans, Native Americans, Alaskan Natives, and Pacific Islanders; and the Graduate Dean's fellowship, which was open only to women and African Americans, Hispanic Americans, Asian Americans, and Native Americans. Students granted the fellowships worked as teachers or researchers.

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The baldly exclusionary nature of the programs meant that students of the "wrong" race or ethnicity or sex had no chance to compete for the opportunities. Not surprisingly, as the Justice Department found, the programs worked as designed. Since 2000, none of the 78 PROMPT fellowship recipients was white or from a minority group other than those the program embraced. The same was true of the 27 recipients of BRIDGE fellowships (created in 2003). As for the graduate deans program, none of the fellowships was awarded to a white male.

Under the consent decree, the programs are being revised so as to exclude no one from eligibility. Nor can race or sex be used to shut out students from any new programs. Obviously, the agreement is important for SIU and its students, all of whom will be treated equally, at least at the threshold. But the case is notable in other respects as well.

Because the programs at issue involved employment, the Justice Department acted under Title VII, the employment section of the Civil Rights Act of 1964. In a case ten years ago brought against Illinois State University, Justice said that Title VII prohibits hiring on a basis that flatly excludes certain people on account of race or sex. But the jobs in that case were for maintenance workers. In the SIU case, Justice has said, in effect, that Title VII draws no distinction between blue-collar jobs and teaching positions and that its anti-discrimination principle extends to both. In neither context may a university say that only people of a certain race or ethnicity or sex may be considered.

This principle would seem to apply not just to paid fellowships for students who aspire to be professors, but also to faculty hiring. Thus, where colleges and universities create professorships for individuals of only a certain race or ethnicity or sex, they would appear to be—certainly they should be—headed for a day of reckoning under Title VII. Not incidentally, if SIU persists in the plan announced last year by its chancellor to set aside $3 million for the hiring of professors of only certain racial and ethnic backgrounds, SIU could find itself again the subject of a Justice Department probe. Jonathan Bean, a history professor at SIU who persistently objected to the paid fellowship programs, points to faculty hiring as "the next frontier of the legal battle over preferential affirmative action." He may be right.

If so, of relevance may be the fact that in its investigation of SIU, Justice refused to treat academic employment in the same terms as the Supreme Court did student admissions in the Michigan Law School case. There, in an interpretation of the Fourteenth Amendment's equal protection clause, the Court recognized "diversity" as a "compelling governmental interest" and thus a good enough reason to justify racial preferences in admissions so long as they are "narrowly tailored." But the Court has never said that the pursuit of diversity may justify race preferences in employment. SIU tried to justify its programs in terms of diversity, but Justice refused to carve out a diversity exception to Title VII's prohibition against employment discrimination. "Colleges and universities can't get away with brazen discrimination in the name of diversity," a senior Justice Department lawyer told me.

It's possible, even likely, that some colleges and universities which have quit their exclusionary ways will nonetheless discriminate on grounds of race and sex among applicants to their revised programs. Still, three years after the Michigan Law School case, it is evident that institutions of higher education can hardly assume that their "educational judgments" involving race and sex are sacrosanct. Thanks to professors willing to oppose discriminatory programs on their campuses like SIU's Jonathan Bean, and to institutions like the Center for Equal Opportunity that are willing to inform wayward schools of their legal obligations, higher education now finds itself being closely watched. And the most recalcitrant schools may find themselves in court. ♦

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Constitutional Surveillance

Listening in on our enemies has never been against the law. BY VICTORIA TOENSING

IN THE AFTERMATH of the *New York Times*'s illegal disclosure of surveillance by the National Security Agency, the Senate now debates whether to amend the Foreign Intelligence Surveillance Act (FISA), the law that formulates a procedure for the president to obtain warrants to wiretap foreign individuals and entities within the United States. The senators claim they are considering such legislation not to bury the NSA program, but to save it. It's time for a legal primer on the Constitution and national security law.

In Article II, the Constitution establishes the president as commander in chief. As such he has inherent authority to conduct warrantless surveillance for the purpose of acquiring foreign intelligence information. He does *not* have the authority to close banks, seize steel mills, or raise our taxes; he *does* have it to get battlefield information about an enemy who has killed thousands of us on our soil and threatens to do so again.

No court opinion denies this constitutional authority to the president. All federal appellate courts that have considered the issue, including the FISA appeals court, have recognized such authority. The Supreme Court, over three decades ago, emphatically specified in the *Keith* case that it would leave this issue to another day. In doing so, the Court provided a clear indication that foreign surveillance is not domestic surveillance.

The *Keith* Court held that the president does not have authority to conduct warrantless searches of entities that are "domestic," i.e., where "[t]here is no evidence of any involvement, directly or indirectly of a foreign power." This decision, the Court stressed, makes "no judgment on the scope of the president's surveillance power with respect to the activities of foreign powers, *within or without* this country." (Emphasis added.) *Keith* made clear that "domestic" wiretapping is a legal term of art that does not turn on whether the surveillance takes place in the United States. Media misuse of that term to characterize the NSA surveillance, where one party is foreign *and* linked to al Qaeda, indicates an absence of legal sophistication or an attempt to prejudice the issue, or both.

Post-*Keith* appellate decisions, before and after the 1978 FISA statute, uphold the president's inherent constitutional authority for warrantless acquisition of foreign intelligence information.

• In 1973, the U.S. Circuit Court of Appeals for the Fifth Circuit relied on one of its previous decisions in holding that it "reaffirms . . . the President may constitutionally authorize warrantless wiretaps for the purpose of gathering foreign intelligence." The court cited a Federalist Papers theme as "buttress[ing]" its decision: "the President must take great care to safeguard the nation from possible foreign encroachment."

• In 1974, the majority of the entire Third Circuit (sitting *en banc*) considered a challenge to an espionage conviction where warrantless surveillance had not only been carried out by the president but also used at trial. In affirming the conviction, the court stated, "The importance of the President's responsibilities in the foreign affairs field requires the judicial branch to act with the utmost care when asked to place limitations on the President's powers in that area. As Commander-in-Chief, the President must guard the country from foreign aggression, sabotage, and espionage."

Significantly in this case, there was a statute (not FISA) prohibiting anyone, including government personnel, from monitoring communications. The court noted that Congress had given "little or no discussion" of whether the statute had any bearing on the "President's constitutional duties as Commander-in-Chief and as administrator of the nation's foreign affairs." Had Congress done so, it "would have recognized," said the Court, "that any action by it that arguably would hamper . . . the President's effective performance of his duties in the foreign affairs field would have raised constitutional questions."

• In 1980, the Fourth Circuit considered the issue of warrantless surveillance after FISA was passed. However, because the wiretapping had taken place prior to FISA's enactment, the government had to rely on the constitutional basis to uphold the warrantless surveillance. The Carter Justice Department argued that it did not seek a warrant in the spy investigation because there is a "foreign intelligence" exception to the Fourth Amendment warrant requirement. In fact, Carter's legal shop claimed this exception applied if the surveillance "is to *any degree* directed at gathering foreign intelligence." (Emphasis added.) Perhaps the former president forgot his prior legal position when he decried warrantless searches at Coretta Scott King's funeral. Although the Court rejected Carter's expansive definition of foreign intelligence, it upheld the national security exception to the warrant requirement.

The Fourth Circuit explained that a warrant in the area of foreign intelligence would "add a procedural hurdle" that could increase the "chance of

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leaks" and "delay executive response to foreign intelligence threats." Such threats "require the utmost stealth, speed, and secrecy."

Although it did not have to do so to reach its decision, the Fourth Circuit discussed FISA, stating it requires, "prior judicial approval for some foreign intelligence surveillance." The act, though, "does not . . . transport" the warrant requirement "unaltered into the foreign intelligence field." Thus, after passage of FISA, this court took great pains to stress that a FISA warrant is not the only legal method for the president to obtain foreign intelligence.

• Most significantly, in 2002, the FISA appellate court cited the Fourth Circuit case saying, "The *Truong* court, as did all other courts to have decided the issue, held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information. . . . We take for granted that the President does have that authority and, assuming that is so, FISA could not encroach on the President's constitutional power."

CORBIS / Brooks Kraft

John Negroponte at the National Security Agency, January 25, 2006

So there is the rub. Under established case law, parts of FISA are unconstitutional in so far as they prohibit or limit the president's constitutional authority to collect foreign intelligence information.

There is an important rule of judicial review. Courts do not like to declare laws unconstitutional and will attempt to find language that "saves" them. That rule brings us to the president's arguing that the congressional resolution giving the president the Authority to Use Military Force (AUMF) permits him to wiretap consistent with FISA. In an irony too scrumptious to resist pointing out to the critics, the president's argument is an attempt to save FISA from being declared unconstitutional.

A little statutory history is required to understand this legal argument. When Congress passed FISA it contained two contradictory statements: (1) FISA and the criminal wiretap statute were the "exclusive means" by which there could be interception of wire and oral communications, and (2) a person is guilty of a crime if he intentionally "under color of law" (which is how the president does it) obtains foreign intelligence information, *unless* he is "authorized by statute." Like it or not, that's how laws get passed. Each side gets something. Those against any wiretapping got the gift of limiting the conduct to those two laws; proponents got the gift of an exception to that limitation: some other law.

There has been ill-informed criticism of the president's use of the broad language of the Authorization to Use Military Force ("use all necessary and appropriate force against" those responsible for 9/11) to support the argument that Congress passed a law that fits that FISA exception. For example, George Will groused recently in the *Washington Post* that the administration "incoherently argue[s] that the AUMF . . . authorized the NSA surveillance." Yet in the 2004 *Hamdi* case, a majority of the Supreme Court agreed with the president's argument.

Hamdi was an American citizen captured on the battlefield in Afghanistan and detained in the United States as an enemy combatant, meaning he was imprisoned but not charged with a crime. Hamdi argued he should be freed because there is a law mandating that "no citizen" shall be imprisoned unless there is an Act of Congress. There is no such act, claimed Hamdi. But five of the Supreme Court justices agreed that the AUMF could have such a broad reading. "[I]t is of no moment that the AUMF does not use specific language of detention. Because detention to prevent a combatant's return to the battlefield is a fundamental incident of waging war," the words "necessary and appropriate force" were a clear congressional authorization to detain Hamdi, according to Justice O'Connor's rather coherent opinion. No one can seriously argue that obtaining foreign intelligence information about the enemy is not a "fundamental incident of waging war."

An amendment to FISA would be nice as a political matter—the two branches in agreement and all those warm good feelings. But it is not necessary legally for the constitutional health of the NSA program. ♦

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De Facto Parenthood

The reformers' latest unwholesome innovation in family law. BY SARA BUTLER NARDO

ELEVEN YEARS AGO, Page Britain gave birth to a baby girl, assisted by her partner of six years, Sue Ellen Carvin. Nine months before, Carvin had helped artificially inseminate Britain with sperm donated by a friend. Britain and Carvin raised the little girl together until their relationship ended just before the child's sixth birthday.

Then, Britain tried to prevent Carvin from seeing the child. Carvin went to court, petitioning for visitation rights despite having no legally recognized relationship to the child. In November, the Washington State Supreme Court ruled that Carvin does indeed have legal standing from which to seek visitation. To achieve this result, the court dipped into the magician's hat of common law (loosely defined) and pulled out a rabbit: de facto parenthood.

Washington is only the latest state to embrace this new concept. At least ten states, including California, Maine, Massachusetts, New Jersey, and Wisconsin, allow a person with no legal or biological relationship to a child to petition for "de facto" or "psychological" parent status on the basis of a relationship between the adult and child. The judge can award this legal status if he determines that the adult filled the function of a parent for a sufficient length of time. We are likely to see more courts take this step in the future. As long ago as 2000, the influential American Law Institute issued suggested guidelines for de facto parenthood in its *Principles of the Law of Family Dissolution*, cited in several of the rulings establishing de facto parenthood.

The advent of de facto parenthood has been hailed as a victory for gays and lesbians, who, it is argued, must be allowed to establish legal parenthood this way since they cannot do so through marriage. But judicially created and enforced de facto parenthood is not the only way to address the situation of gay and lesbian couples raising children; indeed, many of the states that have created de facto parenthood already allowed second-parent adoption to gay and lesbian couples, but couples who ended up in court had declined to take advantage of it.

Will judges really be able to tell whether a mother or father is "fostering a parent-like relationship" between, say, a new lover and a son or daughter, or merely encouraging them to get along?

And gays and lesbians are not the only ones seeking de facto parenthood; *Youmans* v. *Ramos*, one of the cases that defined de facto parenthood in Massachusetts, involved a dispute between 11-year-old Tamika's father and her aunt, who had raised Tamika while her father was away serving in the military. Nor will gays and lesbians be the only ones to suffer from the unintended consequences of creating a new class of parents, retroactively designated and detached from any foundation in biology or adoption.

Under the new regime of de facto parenthood, biological and adoptive parents, gay or straight, may find that they have unintentionally given third-party adults a legally enforceable right to their children after cohabiting or remarrying. The tests that courts have set up to determine de facto parenthood are supposed to take into account the intentions of any legal parents. But will judges really be able to tell whether a mother or father was "fostering a parent-like relationship" between, say, a new lover and a son or daughter or merely encouraging them to get along?

In cases of a subsequent marriage, when the child already has two legal parents, will both parents' attitudes toward their child's relationship with a step-parent be taken into consideration? Or can a parent's access to his or her child be reduced because of a de facto relationship over which he or she had no control? In principle there is no numerical limit to the number of de facto parents a child can have. Custody battles between two parents can get ugly enough—imagine custody battles among three or four.

While de facto parenthood allows a subsequent spouse or a live-in boyfriend or girlfriend to continue their relationship with a child even after their relationship with the child's legal parent ends, it also allows them to use the threat of suing their ex-partner for de facto parenthood. And there are new potential consequences for parents who invite a family member to live with them. Will grandma want to take her grandchild with her when she moves out?

While the courts have attempted to create objective criteria for de facto parenthood, the category remains far fuzzier than parenthood as traditionally defined. The Washington court, following Wisconsin's model, established a four-part test to be used by judges in determining whether a person has standing as a de facto parent:

> (1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner

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and the child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of financial compensation; and (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

Rather than answering a simple question—Does the adult have a biological or adoptive relationship to the child in question?—judges will award parenthood depending on whether the relationship appears sufficiently "parent-like," a notable expansion of state power in the realm of family life.

The courts have justified the creation of de facto parenthood by arguing it serves the best interests of children. In reality, however, it works at cross-purposes to the institution that most essentially serves children's interests—marriage. Marriage works precisely by binding together the various aspects of parenthood—the biological, legal, and psychological attachments, not to mention the financial and emotional interests, of two parents and their children—which de facto parenthood fragments. In reality, de facto parenthood serves adults more than children, as it continues adults' liberation from marriage, strengthening their ability to found or join a family however they wish, without marrying first, or ever.

This new circular definition of parenthood—a parent is a person who performs the function of a parent—is part of a larger trend in family law that sees the law as the creator of the family, rather than one of its many custodians. According to the new dispensation, the words we use to describe this most vital social institution—family, mother, father, marriage—do not correspond to natural relationships, but are mere labels that the state is free to apply as it sees fit.

In the case of the label "marriage," the proposed change that is currently in the air has been widely and loudly debated. The legal definition of "parent," meanwhile, is already quietly changing. ♦

CBS Does Denmark

But doesn't bother to get the story right.

BY HENRIK BERING

Copenhagen

When *60 Minutes* shows up on your doorstep, you have reason to fear for your good name and reputation. The Danes learned this last week, when reporter Bob Simon and his team of cameramen descended on the country to pass judgment in the controversy over the Muhammad cartoons. The result of their labors was a 12-minute segment that displayed all the customary *60 Minutes* arrogance and superficiality. In the report, the respected Danish daily *Jyllands-Posten*, which originally printed the cartoons, came across as a publication hellbent on gratuitously offending millions of Muslims around the world, while the Danes themselves were portrayed as naive, full of themselves, xenophobic, and way too blonde for their own good. Did we forget provincial? Add that to the list of Danish foibles, too.

The 12 cartoons were commissioned last fall when the editors of the *Jyllands-Posten*, feeling that a note of fear and self-censorship had crept into the Danish public discussion of matters Islamic, decided to test whether this was true. (Specifically, a writer of children's books had reported difficulty in finding an illustrator for a life-of-Muhammad volume.)

After an initial flap when the cartoons came out in the paper's September 30, 2005, edition, nothing much happened for months. Then a delegation of fundamentalist imams from Denmark decided to tour the Middle East, stirring up hatred. Unsure that the original, rather lame cartoons would be sufficiently incendiary, the imams added three crude images to the portfolio, including one purportedly of the prophet Muhammad disguised as a pig. (It turned out to be a photocopied picture of a man in a pig mask from a rural French hog-calling contest.) That certainly did the trick. The Danes were suddenly the most hated people on Earth, with their embassies under attack, their flag being burned, and their consciousness being raised by lectures on religious tolerance from Iran, Saudi Arabia, and other beacons of enlightenment.

Among the participants in the *60 Minutes* trashing of Denmark was Ahmed Abu-Laban, a Palestinian refugee and self-appointed spokesman of Danish Muslims, who instigated the tour of the Middle East and whose name has been linked to some very unpleasant groups and individuals in the Middle East. But rather than explore Laban's background and grill him in depth on the question of the added cartoons, CBS treated him with kid gloves as an aggrieved individual. Not a word about his contacts, nor of the fact that he has been speaking with a forked tongue, urging dialogue in his Friday prayers in Denmark, while inciting confrontation and boycott when talking to Middle Eastern audiences. All this is easily obtainable information, which CBS chose to ignore.

Unfortunately, the editors of the *Jyllands-Posten*, having received a forewarning about the likely drift of the program and reportedly in a state of shellshock after weeks of criticism, chose not to appear on the show. With death-threats and *fatwas* issued against the cartoonists, the paper had thrown in the towel and issued public regrets

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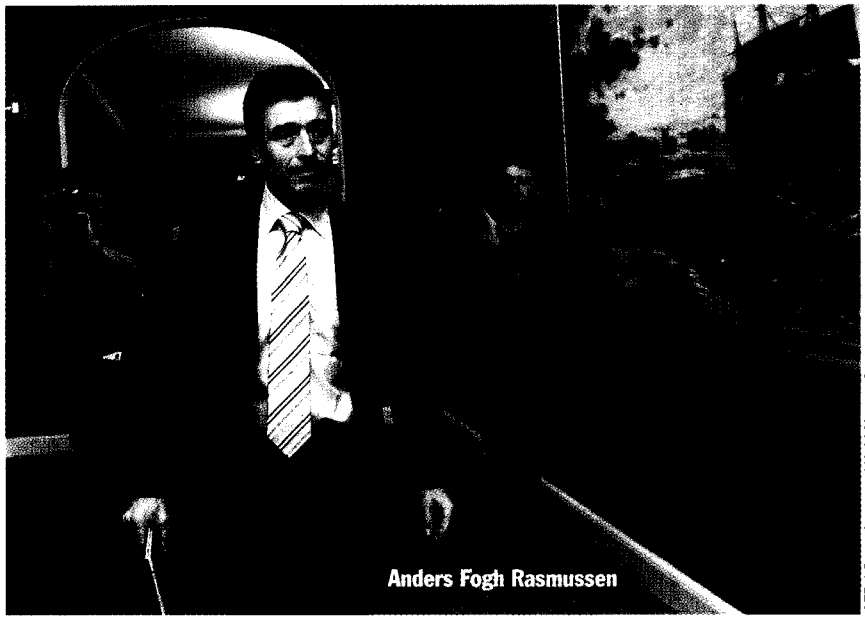
for having offended Muslims.

With the main players not being on hand to defend the rights of a free press, this task was left to Tøger Seidenfaden, editor in chief of a rival paper, the liberal *Politiken*, which has been in the forefront of condemning the publication of the cartoons and whose endorsement of the principle of freedom of speech was accordingly less than ringing. Some suggest that the problem with *Jyllands-Posten* is that, not being left-wing, it is not perceived to merit the kind of unqualified support from Seidenfaden and his colleagues in the Danish press that Salman Rushdie received when the *fatwa* was issued against him by the mullahs in Tehran back in 1989 over his novel *The Satanic Verses*.

Having condemned the editors of *Jyllands-Posten* as irresponsible and cowardly to boot for not showing up for public chastisement, it was now time for *60 Minutes* to turn to the rest of the country. As evidence of its general xenophobia, Simon pointed to Denmark's strict policies on immigration, which he called the toughest in Europe and which have earned criticism from all the same organizations that habitually find fault with America: the U.N., the European Commission on Human Rights, Human Rights Watch, etc.

To understand Denmark's current stance on immigration, you need to know how these policies came about. Through the 1980s and 1990s, Denmark had an open door policy towards asylum-seekers from the Third World and the Middle East, Palestinians in particular, often without sufficient background checks being made. It was naively believed that if you gave people a nice home, public benefits, access to free hospital care and free schools, and freedom from persecution, they would turn into nice Social Democrats.

After two decades of this policy, whose costs in terms of taxes have been colossal, the Danes, like the Dutch, the British, and the French, realized to their horror that integration was not working. Instead, multiculturalist dogma had led to the development of parallel societies, in which people chose to carry on the fights of their countries of origin, while turning their backs on the country that had let them in. Thus fundamentalist hate groups like Hizb ut-Tahrir, which has called openly for its members to kill Jews, have been increasingly vocal in Denmark. The organization is banned in Germany and in Sweden, but so far there has been no attempt to shut it down in Denmark.


Anders Fogh Rasmussen

AFP / Getty Images / Keld Navntoft

Trying belatedly to get a handle on the situation, the center-right government of Anders Fogh Rasmussen, which came into office in 2001, imposed strict limits on immigration, urged on by its parliamentary supporters, the Danish People's party, which was the first party in Denmark to insist that there was an immigration problem. On *60 Minutes*, this party was labeled "ultra right-wing," suggesting strapping fascist youths roaming the streets in search of defenseless Muslims. For anybody even vaguely familiar with Danish politics, this is a ludicrous caricature. The party consists mainly of middle-aged former Social Democrats who were disenchanted with that party's refusal to tackle the issue.

In its handling of immigration issues, it is instructive to compare Denmark with neighboring Sweden, which faces exactly the same kind of problems. The difference between the Swedes and the Danes is that the Swedes have suppressed all debate on immigration, while the Danes insist on carrying on an open and frank discussion. The result is that Sweden has had some really nasty episodes of racist violence, in which people have gotten killed; Denmark so far has had none.

There are two roads the Danes can take. One is to cave in to international pressure, loosen up on immigration, and try in general not to give offense. This is bound to fail, as it is not within the power of the Danes to decide who chooses to be offended. It is the Islamists who pick these fights. If it had not been the caricatures, it would have been something else.

The other is to continue to pursue the course Prime Minister Rasmussen is currently on, seeking to establish bonds with moderate Muslims, while trying to integrate those who are already here rather than adding new ones. Here it might be a good idea for the Danes to quit worrying overly how they are viewed abroad. And indeed, to some Danes, there are worse things than seeing their flag burned together with the American Stars and Stripes. At least they are in excellent company.

To describe a small nation under international pressure would have been an excellent journalistic undertaking. To do so, though, you have to know something of the country you describe. Too bad the *60 Minutes* reporters—whose quaint liberal fables of ethnic victimization haven't been updated since the 1960s—couldn't be bothered. ♦

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Harvard Lays an Egg

The triumph of the diversity faction and the fall of Larry Summers

By James Piereson

When the late Allan Bloom visited the Harvard campus some years ago to deliver a speech on his bestselling book *The Closing of the American Mind*, he began his remarks with the salutation, "Fellow Elitists," a takeoff on Franklin Roosevelt's address years earlier to the nativist Daughters of the American Revolution which he introduced with the words, "Fellow Immigrants." Bloom was having some fun at the expense of Harvard's students and faculty, all of whom had competed mightily to gain entrance to one of the most selective and prestigious colleges in the world, only to turn around once there to adopt a posture of thoughtless egalitarianism. He was also making the deeper point that higher education ought to involve the pursuit of excellence rather than of vulgar equality or "diversity."

Bloom's indictment came to mind with the news of the forced resignation of Lawrence Summers from the presidency of Harvard University. Summers, perhaps in a somewhat ham-fisted style, had tried to make the case for excellence at Harvard but generated furious resistance and opposition in the process. His ouster speaks volumes about the anti-intellectualism that is engulfing Harvard and others of our great academic institutions.

Summers's resignation, to be sure, came as no surprise. The announcement even seemed anticlimactic in view of the battle that had been waged against him for more than a year by activists on the arts and sciences faculty. Given this strife, it was perhaps inevitable that members of the Harvard Corporation, the university's governing body, would sooner or later ask him to step aside. His term in office, which began with such promise, thus ended prematurely after just five years, the shortest of any presidential tenure at Harvard in more than a century. When Summers departs in June, he will be replaced on an interim basis by Derek Bok, who will turn 76 in March, and who was himself president from 1971 to 1991.

Still, notwithstanding its inevitability, the end of the Summers presidency marks a sad day for higher education. Despite all the talk about his abrasive personality and headstrong management style, Summers was a casualty of the left-wing ideological standards erected by Harvard's arts and sciences faculty. The historian Bernard DeVoto wrote decades ago that the Harvard he knew was "a republic within the Republic, a church that cuts across the churches, a class drawn from all classes." That ideal now seems far beyond our reach. The Harvard on display during the Summers ordeal resembles more a mad collection of petty interests pushing and pulling on one another for money, position, and advantage.

There are certainly many lessons to be learned from this debacle, but two immediately stand out: first, that our major academic institutions are run by their faculties, not by trustees or students, or by donors or alumni; and, second, that the activist members of faculties will not accept from presidents (or deans or provosts) any contradiction of cherished ideological assumptions, most of which revolve around the magical word "diversity." Presidents at other institutions, and administrators harboring aspirations for advancement to presidential posts, are bound to take note of Summers's downfall, and will certainly take steps to avoid a similar fate.

Summers was appointed in 2001, the 27th in a line of presidents that stretches back to Harvard's founding in 1636. He came to the post with a reputation as something of a *wunderkind* in the fields of economics and finance: one of the youngest individuals in modern history to win tenure at Harvard, the first social scientist to receive the prestigious Alan T. Waterman award from the National Science Foundation, winner of the John Bates Clark medal given by the American Economics Association to

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the outstanding American economist under the age of 40. By 45 he had served as chief economist of the World Bank, undersecretary of the treasury for international affairs, and, finally, secretary of the treasury in the Clinton administration. His impressive record, however, was accompanied by a reputation for brashness and blunt-speaking that many warned would lead to trouble in academe, where sensitivity and consultation trump just about every other virtue.

Summers's appointment was initially hailed as a sign that Harvard wished to renew a tradition of having as its president an educational visionary who might be a reformer in Cambridge but also a national spokesman for the ideals of higher education. His arrival on campus was thus something of a slap at Neil Rudenstine, his publicly diffident predecessor, who had himself run afoul of important faculty interests with the suggestion that Harvard should amend its ancient financial rule of "every tub on its own bottom." At most institutions, presidents are expected to be fundraisers and managers rather than intellectual spokesmen, but Harvard with its $26 billion endowment could afford a leader who might communicate ideas instead of romancing potential donors full time.

The thought that Summers might be the modern day equivalent of nationally influential presidents like Charles William Eliot (1869-1909) or James Bryant Conant (1933-53) was perhaps naive in view of the changes of the past half-century—in particular the emergence of an assertive and highly politicized faculty. Nevertheless, Summers gave it a good try. In an early address, he laid out an ambitious (and admirable) agenda for strengthening undergraduate education, recruiting outstanding young scholars who might begin to replace a rapidly aging tenured faculty, and turning Harvard into an institution that tolerates a spectrum of controversial ideas. Summers, moreover, made clear early and often that he was devoted to a meritocratic ideal that required the recruitment of the best scholars in the world. Yet he may not have fully realized that such a commitment put him on a collision course with parts of the faculty just as fully committed to an egalitarian conception of the university.

Summers's background as a political appointee in Washington may have been poor preparation for a modern college president. He would have learned there that just about every position taken generates adversaries from the opposition party but also allies from one's own. As a Democrat, moreover, he would have also seen that opposition came generally from conservatives. The world of national politics encourages disagreement, debate, and opposition as instruments of effective policy. None of these lessons applied at Harvard, where a controversial position would generate nothing but opposition, important disagreements were suppressed or ruled out of bounds, and the political spectrum was distorted far to the left. He had been used to operating as a liberal, but now found himself on unfamiliar ground as a moderate or—heaven forbid!—a conservative.

Summers's major sin in the eyes of the liberal and left-wing faculty was his insensitivity to the diversity regime that has taken over at Harvard and just about every other major institution in the country. This regime is propped up by mythical presumptions, the major one being that the United States has been guilty of oppressing or otherwise holding back various groups, especially blacks, women, homosexuals, American Indians, people of Hispanic origin, and others who make up perhaps 75 percent of our population. These groups, so the argument goes, are owed special consideration on the campus by virtue of their victimization, which means in practice that no one is allowed to question their oppressed status, their claims to special consideration, or their privilege to complain about any institutional practice that they find inconvenient.

The diversity industry that has grown up around the campus asserts (without any evidence) that a departure from proportional representation in any field or department is, *ipso facto*, evidence of discrimination. This is why there exist preferential hiring practices for women and minority groups on every campus, and various scholarship programs, publications, study centers, and curricular offerings designed specifically for every designated group. All have created their own advocacy groups to press their claims, the most influential one on the Harvard Campus being the Women's Caucus of the Faculty of Arts and Sciences. Most intelligent people understand that these practices have been carried beyond the point of absurdity but have no idea how to rein them in. Summers, as it turned out, endorsed the diversity regime in the abstract (otherwise he could never have been hired) but, given his simultaneous belief in excellence, could not help but take steps or make comments that contradicted it.

Summers's transgressions began shortly after he took office, when he challenged Cornel West, a member of the Afro-American Studies Department, to pay more attention to scholarship than to making recordings of rap music—a seemingly appropriate and innocuous charge for a president to give to a faculty member. Yet West took offense, as did others on the faculty, on the grounds that Summers had been racially insensitive and had no right to chastise a member of the faculty about his research. For his pains, West was inundated with handsome offers from other institutions, and shortly headed off to Princeton.

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Summers next gained public attention by observing that efforts to force the university to divest investments from companies doing business with Israel were, as he said, "anti-Semitic in their effect if not in their intent." Critics on the faculty denounced this accurate statement as "inflammatory"—while ignoring the inflammatory actions that had provoked it. Summers later spoke warmly about the American military, expressed support for our soldiers in the field, and called for the return of ROTC to the campus—all of which further inflamed left-wing elements on the faculty.

Then, early last year, Summers dropped the bomb that would lead directly to his ouster. Speaking at a research conference on the subject "Diversifying the Science and Engineering Workforce," he suggested, citing research literature, that the paucity of female professors in fields like physics, astronomy, and mathematics was due less to discrimination and more to career choices, the unwillingness to put in "80 hour weeks" and differences in "aptitude" between the sexes. He called for more research on the subject, though his critics on the faculty, outraged by the suggestion that there might be deep differences between men and women, insisted that it was wrong for the president to call for research on a subject about which they had made up their minds.

The apologies and concessions did Summers little good, for the advocates of diversity on campus will tolerate nothing less than wholehearted endorsement of their aims.

Summers's remarks, which lasted forty minutes, were a broadside, from the point of view of an economist, against the central premises of the diversity ideology. Many factors other than discrimination, he said, account for group disparities in various occupations, and it is impossible to engineer representational equality in a marketplace in which people are constantly making independent choices as to how to allocate time and money. Summers's assessment was obviously true, but it was also one that left-wing faculty members, particularly feminists, did not wish to hear. The fallout from these remarks is vivid evidence that, of all the victim groups on campus, the feminists wield by far the greatest influence.

It is unfortunate that in response to heated criticisms Summers chose to apologize for his remarks instead of defending them on intellectual grounds. Within a week, he issued an abject apology. "I deeply regret the impact of my comments," he said, "and apologize for not having weighed them more carefully." He went on to say that he regretted sending an "unintended signal" that might discourage talented women from pursuing careers in science. Summers was obviously in internal conflict over the diversity issue, one day attacking its central presumptions while the next apologizing for having so offended key groups on campus.

The episode was a boon for the feminist groups, so much so that one suspects they worked overtime to keep the controversy alive in order to extract maximum concessions from their mortally wounded president. Soon, Summers appointed historian Drew Faust to head an initiative to improve the status of women in the university. She remarked at the time that Summers's talk had created "a moment of enormous possibility" for women on the campus. Next a new "deanship of diversity" was created to advise the dean of the Faculty of Arts and Sciences on issues of importance to women and minorities. Then, a few months later, Summers announced an initiative to spend $50 million over the next decade to increase the number of women on Harvard's faculty.

Summers was plainly working overtime to make amends to those whom he had offended, though it would have been better if he had stood his ground. He might not thereby have saved his job, but he at least would have opened the way for a genuine debate over diversity, which will no doubt be driven underground once more in the wake of this episode.

The apologies and concessions did Summers little good, for the advocates of diversity on campus will tolerate nothing less than wholehearted endorsement of their aims. The uproar led to three tumultuous meetings of the arts and sciences faculty in which Summers was denounced for his remarks about women and science, for his (alleged) imperious management style, and for his violation of the norms of the campus "community"—this last a code word for speaking contrary to the diversity regime. In the last of these meetings, last March, the faculty passed an unprecedented resolution of "no confidence" by a vote of 218 to 185. As Professor Alan Dershowitz has pointed out, the resolution originally contained an explanatory note (later removed) that justified the action in terms of the president's "ongoing convictions about the capacities and rights not only of women but also of African Americans, third-world nations, gay people, and colonized peoples." This note, as Dershowitz concludes, made it clear that Summers's main fault in the eyes of the faculty was that he was not sympathetic to the diversity agenda. No matter how often he apologized, Summers could not remove the stain he had acquired in the eyes of his adversaries. His apologies and concessions, meanwhile, discouraged erstwhile supporters.

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Peter Steiner

Over the past several months, Summers operated more or less defensively, guarding his public comments, occasionally making light of his mistakes, and hoping that ill-feeling among the faculty would subside so that the university could get on with its business. It was an idle wish. The angry recriminations surfaced again a few weeks ago after Summers forced out William Kirby, the popular dean of the faculty of arts and sciences, apparently for failure to advance the president's goals for reforming the general education curriculum. The arts and sciences faculty called another meeting to consider a second vote of no confidence. At this point, members of the Harvard Corporation, particularly Robert Rubin, a Summers supporter and his predecessor as secretary of the treasury, began to canvass faculty members about the depth of their opposition. This, to Summers, must have appeared an obvious sign that he had lost the support of the Corporation. Given the capitulation of the university's governing body, he had little choice but to resign or to be fired.

There are some, both on and off the campus, who will now look to the Harvard Corporation as a source of level-headed guidance for the institution. The Corporation, established by the original charter of the college, is a seven-member governing board consisting of five self-appointed "fellows" plus the president and treasurer of the institution. Yet those who look to this secretive body for leadership are likely to be disappointed, for it is plain that the members of the Corporation greased the skids for Summers's fall, taking their cues from disgruntled members of the arts and sciences faculty and failing to consult with students or with deans and faculty members in the various professional schools.

One explanation for its unhelpful role in this fiasco is that the Corporation itself seems fully committed to the diversity regime that drove Summers from office. There are two liberal Democrats on the panel, Robert Rubin and Robert Reischauer, president of the Urban Institute in Washington, both of whom are policy wonks in the Summers mold. There appears to be a "feminist" seat on the board, currently occupied by Nannerl Keohane, formerly president of Wellesley and later of Duke, who replaced Hanna Holborn Gray, retired president of the University of Chicago.

It also appears that there is a "black" seat on the Corporation, which was occupied until late last year by Conrad K. Harper, a New York lawyer, who resigned in protest against statements Summers had made about women and minorities. He was replaced recently by Patricia King, Georgetown University law professor and wife of the left-wing author Roger Wilkins. King is a feminist activist who in 1991 testified against confirmation of Clarence

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Thomas to the Supreme Court. More recently she was one of the signers of a petition at Georgetown calling on Congress "to repeal the disgraceful Solomon amendment" (which requires universities to permit military recruiters on campus or lose federal funding) and reaffirming the faculty's opposition to military recruiting on campus. King, who takes her post in the spring, seems an unlikely ally for any president in the Summers mold.

The membership of the Corporation, in other words, runs the gamut of political opinion from A to B, from liberal Democrat to left-wing Democrat, and seeks to represent the same groups as are active on the arts and sciences faculty. It stands to reason that they would be willing to force out their president.

Nevertheless, important positive elements emerged from the Harvard crisis. Summers was ousted through an arrangement between the Corporation and the arts and sciences faculty, but he maintained strong support from the deans of the professional schools, including David Ellwood of the Kennedy School, Elena Kagan of the law school, and Jay Light of the business school. Many alumni and important donors to the university could not understand why a president with Summers's credentials should be driven out on the basis of the charges made by his faculty adversaries.

Harvard's students, moreover, in a poll conducted by the Harvard *Crimson*, supported Summers by a ratio of 3 to 1. Many noted that they liked Summers, saw him frequently on the campus, and felt that he was an effective leader for the institution. The *Crimson* itself editorialized in favor of Summers, opposed his ouster, and said that the university was the loser by his departure. It should be noted that the most comprehensive and reliable reporting on this entire episode came not from the *Boston Globe* or the *New York Times*, but from the part-time student editors of the *Crimson*. The younger generation may not buy into the diversity mythology as their professors do.

Indeed, perhaps today's students, along with others who believe in liberal education, can take heart from the words of the late historian Richard Hofstadter. Speaking at commencement exercises at Columbia University in 1968 shortly after student radicals shut down the institution, he said, "A university is not a service station. Neither is it a political society, nor a meeting place for political societies. With all its limitations and failures, and they are invariably many, it is the best and most benign side of our society insofar as that society aims to cherish the human mind." He went on to say that the university is "a center of free inquiry and criticism—a thing not to be sacrificed for anything else." We have gone a long way toward sacrificing it, but out of the wreckage of this sad affair we may begin to see a way back. ♦

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The Misunderstood Fourth Amendment

The originalist reading is better both for civil liberties and for fighting the war on terror

By Stanley C. Brubaker

It is a truth universally acknowledged, that a government in want of information must be in possession of a warrant. Or, if one prefers to quote the Warren Court, as do critics of NSA surveillance and the Patriot Act: "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment."

Well, sort of. Unless, that is, the police are in hot pursuit, or conducting a search incident to a lawful arrest, or have "reasonable suspicion" that a crime is about to be committed, or a suspect has given consent to a search, or a suspect's joint possessor (or roommate) has given consent —then no warrant is required. Or, come to think of it, unless federal administrators are checking whether a shop has followed minimum wage and maximum hour regulations, or a chemical company has complied with environmental regulations, or a liquor store's bookkeeping conforms to federal standards. Or unless the IRS wishes to see whether your income tax return squares with your bank records, or HHS wants to see if you have kept up your child support payments. Or unless you are visiting the House or the Senate or entering most any other government building. Or unless you are a high school student and the principal has reason to believe that you have cigarettes in your purse. Or unless you are hoping to board a plane, or a train, or to leave the country, or return to it. Each of these instances involves a government search; none requires a warrant.

In the 1967 case of *Katz* v. *United States*, Justice Potter Stewart qualified the "*per se* unreasonable" statement above by adding—"subject only to a few specifically established and well-delineated exceptions." But in the face of such pervasive, and hardly "well-delineated," examples of warrantless government searches, one must wonder if it isn't *warrants* that are the exception.

And indeed, if one consults the text and history of the Fourth Amendment, an exercise often disdained by the Warren Court, one will find that such is the case. Ironically, a more originalist reading reveals a Fourth Amendment that is better suited both to protecting civil liberties and to fighting the war on terror.

Start with the simple text of the Fourth Amendment, which contains two clauses, as emphasized in the formatting below:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,
> and
> no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Note that these are independent clauses—the first concerning "unreasonable searches and seizures," the second concerning "warrants" and "probable cause." What is their relation to each other?

The Warren Court encouraged a "second clause dominant" approach. That is, the second clause defines what is meant by the first clause. What, under this approach, is a "reasonable search"? It is one in which a warrant has been issued by a judge upon probable cause, etc.

This reading is possible, but hardly compelling. If this is what the Founders meant, why didn't they say just say so? It would not have been difficult to subordinate the first clause to the second. They could have written, for instance, "*As* the people have a right to be secure in their persons, houses, papers, and effects, against unreasonable search or seizures, no warrants shall issue, but upon probable cause, etc." Or, even better, and in keeping with the Constitution's celebrated concision, they could have simply eliminated the first clause entirely and stuffed its gist

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into the second. "No warrant shall issue [for search or seizure of persons, houses, papers, and effects], but upon probable cause. . . ."

Of course, neither of these rephrasings leaves much room for Justice Stewart's "few well-delineated exceptions." But then, if room for exceptions was the point, the original phrasing, "The right of the people to be secure . . . against unreasonable searches," seems an odd way of making it.

A growing number of jurists and scholars—most notably, Yale's Akhil Amar—are coming to see that a "first clause dominant" approach to the Fourth Amendment better comports with the text, history, and common sense. The first clause states the general rule: All searches must be "reasonable." The second clause provides an important specification of the first: *If* a warrant does issue, it is *per se* unreasonable unless supported by probable cause, etc. Lacking such a warrant, the official can be sued for trespass if the search is otherwise unreasonable.

This reading is by far the more cogent one. It allows us to see the numerous and ill-defined "exceptions" not as exceptions at all, but simply as applications of the general standard of reasonableness. It gains additional force when we realize that throughout the 18th, 19th, and early 20th centuries, the warrant requirement was not the primary way in which the people were rendered secure in their persons, houses, papers, and effects. Instead, as Bradford Wilson of Princeton has shown, the people were rendered secure against errant public officials by the right to sue them for trespass before a local jury. In the colonial period, in fact, warrants were viewed with suspicion precisely because they immunized the public official from such a suit. And for that very reason, the Founders sought to limit the circumstances in which a warrant could issue; otherwise, a warrant would license officials to barge into your home, rough you up, peruse your diary, rifle your private letters, and take some incriminating or embarrassing materials—all with literal impunity.

Understanding the original function of a warrant also allows us to see what a bizarrely ill-fashioned substitute the Warren Court gave us with the exclusionary rule—the doctrine that excludes from criminal trial evidence procured in violation of the Court's warrant requirement, regardless of its reliability. Not only is the criminal to go free, as Benjamin Cardozo famously derided the idea, "because the constable has blundered," but the constable is to go free despite his blundering, and the suspect is to go uncompensated despite his injury. (That is, unless one considers acquittal—or better odds thereof—a form of compensation.)

Members of the Warren Court no doubt believed they were broadening the scope of civil liberties and the rights of criminal defendants. But by teaching that every search under the Fourth Amendment requires a warrant and probable cause, they also implied the obverse: A search that by custom does *not* require warrant and probable cause—the installation of a device recording the telephone numbers of those you call or of those who call you, for example, or a subpoena of your bank records—is not *really* a "search," under the Fourth Amendment. Which is what the Burger Court concluded in precedents that still stand.

More disturbing is that the Warren Court's exclusionary rule fostered the massive misunderstanding that the Fourth Amendment primarily concerns criminal procedure. Neither the constitutional text nor its history implies any such restriction. Regardless of the purpose of a search—criminal, civil, regulatory, disciplinary, or national security—the Fourth Amendment requires that it be "reasonable."

Beyond its disregard of text and history, the Warren Court's "second clause dominant" approach denuded the Fourth Amendment of the robust common sense implied in the concept of "reasonable." "Probable cause" does focus on an important question: What basis do you have for believing something? But that is only one element of a reasonable search, which allows and requires a broader array of considerations that interact in complex ways. How grave is the danger? Are we talking about teens smoking cigarettes in the school bathroom or terrorists smuggling VX nerve gas into the Capitol? How urgent? A ticking time bomb or the acquisition of potentially dangerous materials that will require months of processing? How intrusive is the search? Are there alternative, less intrusive means for conducting it? Are we talking about a metal detector or a strip search?

What if we face the worst concatenation of these dimensions? A grave and urgent danger—say, imminent detonation of a radioactive device—where only swift and drastic measures can succeed. Common sense demands that we allow them. Probable cause demands that government first say with a 51 percent certainty who holds the bomb or where it is—which it cannot do. And at the other extreme? Consider a minor infraction presenting no harm to others—a teenage girl has swallowed forbidden chewing gum, physical evidence of which is needed by the school for disciplinary action. It can only be obtained by an emetic. Common sense says forget it. Probable cause, standing alone, demands that government first say with a 51 percent certainty who holds the gum or where it is—which it can do. Of

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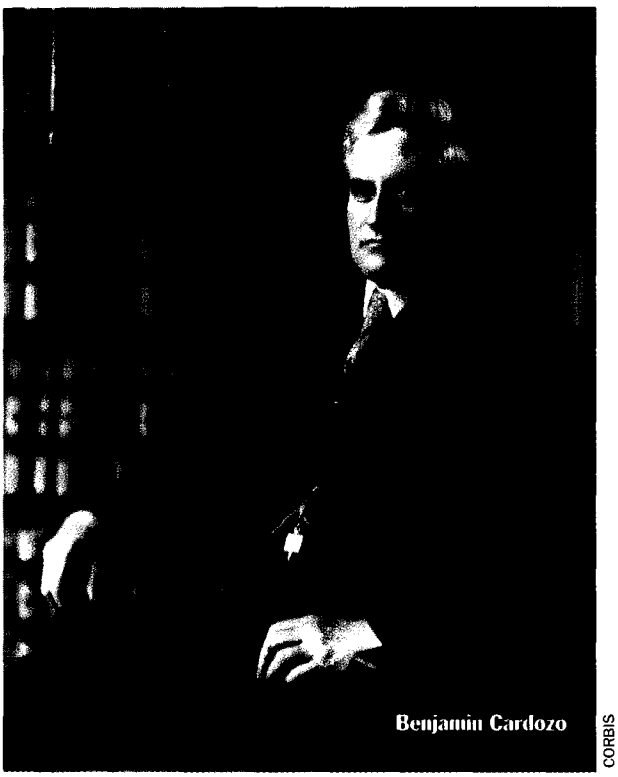
course, no sane jurist would forbid drastic action for the radioactive device or allow an emetic for the chewing gum, but that's because they would be guided by the criterion of reasonableness, rather than by the Warren Court's *per se* formulations.

Once we remove the mounds of misunderstanding that have covered it, we find a Fourth Amendment in far better shape to deal with the war on terror than the misshapen caricature bequeathed by the Warren Court. It is a robust and unstinting Amendment that properly brings within its purview airport screenings and border searches, pen registers and track and trace devices, "national security letters" and other administrative subpoenas, FISA production orders, NSA taps of international communications, and more. At the same time, the protection it provides is against "*unreasonable* searches and seizures," not ones measured by the narrow and rigid criteria of probable cause and particular description. The probability is minuscule that any given air passenger plots a shoe-bomb attack, yet the danger is so grave and the search so minimally intrusive that few could deem it unreasonable to place one's shoes on a conveyer belt as a condition of boarding a plane.


Benjamin Cardozo

CORBIS

The Fourth is also an agile amendment—misunderestimated, one might say—by those who think of it primarily as a rule of criminal procedure. In the war on terror, as jurist Richard Posner has pointed out, the urgent and grave task is knowing who the agents are. Too often, as with September 11, we can identify a terrorist with a probable-cause level of confidence only after an attack has occurred. Surveillance of international calls, where we have identified one party as an agent of terrorism, to take a current example, seems like an eminently reasonable way of obtaining such vital information.

And for the abuses of warrantless searches done in the name of national security, the original understanding of the Fourth Amendment suggests a remedy admirably fit: civil suits for compensatory damages. Warrants should still play their traditional role of conferring immunity. FISA court orders authorizing surveillance should afford individual officers immunity. (It is worth noting that FISA courts issue "orders," not "warrants," so all electronic surveillance for foreign intelligence, contrary to the rhetoric of the critics, is "warrantless.") Already FISA affords such civil remedies, supplemented through the Patriot Act, for unauthorized disclosures, with special procedures to maintain national security. FISA and NSA guidelines might be similarly reviewed through similar procedures in case of a civil suit. Of course, even *in camera* inspection of such guidelines presents legitimate concerns about national security. But on such issues, in time of authorized conflict, courts should recognize that they are not the only body with responsibility for determining the reasonableness of searches.

Moreover, the traditional tort remedy implies the traditional tort threshold for getting into court in the first place—a concrete legal harm. The J. Edgar Hoover era affords ample evidence that surveillance power can be abused. But internal guidelines, developed by professional legal staff of the FBI and NSA; inspectors general, acting as independent watchdogs; and administrative reporting requirements to the intelligence committees and other congressional overseers—all seem to function effectively to limit such abuses. Indeed, in spite of the frenzied attention brought to NSA surveillance by the leaks to the media, the only legal harm so far alleged is that of government spying on Iyman Faris, the Ohio trucker, who ironically makes essentially the same claim as the Bush administration: The evidence used to induce his guilty plea of plotting with al Qaeda to collapse the Brooklyn Bridge would not have been obtained but for this spying program.

Such "harm" also reminds us of the other side of the fundamental right to be secure in our person and property against unreasonable searches and seizures: the government's fundamental obligation to secure us against those who seek to destroy us and our freedom. ♦

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American Classic

Grant Wood and the meaning of his art

BY PAUL A. CANTOR

Grant Wood, American Gothic, 1930 / Friends of American Art Collection, 1930.934 / The Art Institute of Chicago

You know the painting. It's the most famous American painting of the 20th century, perhaps of all time. It has been endlessly reproduced, imitated, and parodied. If we had any sense, we'd put it on the dollar bill. You probably know that it is called *American Gothic*, that it was painted by Grant Wood (in 1930), and that the original hangs in the Art Institute of Chicago. But if, like me, you always wanted to know more about this much analyzed, but still enigmatic, painting, then by all means read Steven Biel's new book. He provides a lively, well-written, concise, and effectively organized account of the painting's genesis, the history of its reception by the general public and art critics, and the many controversies it has sparked over the years.

After reading this book, you will find yourself looking at this overly familiar work of art with fresh eyes, noting details you never spotted before, and wondering how such a deceptively simple painting could lead to so much discussion and debate.

Biel's book is an example of Cultural Studies at its best. He writes with a general audience in view and avoids the kind of dense jargon and obscure theoretical formulations that often make scholarly prose impenetrable to even educated readers these days. The great strength of Biel's book is the way he sets *American Gothic* in the broadest possible cultural context. By the time he is through, we learn that the history of this one painting is virtually the history of 20th-century America in microcosm. In obvious and sometimes not-so-obvious ways, the story of the painting intersects with fundamental moments in United States history, such as the Depression, World War II, and the Cold War. By relating *American Gothic* to these and other important historical events, Biel shows that the Cultural Studies approach can genuinely enrich our understanding of art.

American Gothic
A Life of America's Most Famous Painting
by Steven Biel
Norton, 215 pp., $21.95

Biel rejects a narrowly aesthetic approach to the painting, which would concentrate on its purely formal properties. Rather than limit *American Gothic* to the isolated realm of High Art, Biel traces the many ways this painting has broken out of the confines of the museum and the art history textbook and circulated freely in the vibrant realm of American popular culture. We see the familiar couple popping up in musicals as diverse as *The Music Man* and *The Rocky Horror Picture Show*, or in television programs from *The Dick Van Dyke Show* to *Green Acres*. In the many useful illustrations in the book, we view one odd couple after another stepping into the shoes of the famously posed Iowa couple: Tom Arnold and Roseanne Barr, Buddy Ebsen and Irene Ryan as Jed and Granny Clampett from the *Beverly Hillbillies*, Bill and Hillary Clinton, Paris Hilton and Nicole Richie—even Ken and Barbie, looking more doll-like than usual.

Biel is clearly having fun with his subject, but at the same time, he makes a serious point. For a work of art truly to come alive, it needs to have a wide

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impact throughout a culture, and must be adopted and even appropriated by people from all walks of life for their own purposes. Charles Addams was right in his famous 1961 *New Yorker* cartoon to picture the *American Gothic* couple coming to life and promenading by a startled guard, presumably out into the streets of Middle America, where they belong and have been welcomed and embraced.

Working in the Cultural Studies mode, Biel, of course, feels obligated to go for the intellectual hat trick of race/class/gender analysis, but even here he demonstrates restraint and avoids the excesses of his colleagues. For example, Biel brings up a sort of Gay Studies reading of *American Gothic*—Robert Hughes's claim that "Wood was a timid and deeply closeted homosexual" and the painting is "an exercise in sly camp, the expression of a gay sensibility so cautious that it can hardly bring itself to mock its objects openly." Biel wisely rejects this reading, and on the refreshing grounds that Hughes is simply unable to offer any evidence for his claims.

On the issue of race, Biel eventually gets around to noting what might seem obvious from the beginning: that the figures in *American Gothic* are both white. But instead of accusing Wood of racism, Biel uses the occasion to discuss one of the many interesting variations on *American Gothic*, a photograph with the same title taken by the African-American artist Gordon Parks in Washington in 1942. In front of an enormous American flag hanging on the wall at the Farm Security Administration, Parks posed a black cleaning woman named Ella Watson—posed her in a way that clearly calls to mind the Grant Wood painting. According to Biel, this photo made an important statement: "The normative whiteness of the now iconic *American Gothic* did not go unrecognized and unchallenged."

In the end, Biel evidently feels uncomfortable with the fact that *American Gothic* has become an icon of Middle America, and that means white, middle-class, heterosexual America. He writes: "I prefer a different *American Gothic*, one in which the 'they' of the framed figures have not become the 'we' of the nation." But fortunately, Biel does not let his politically correct attitudes interfere with his telling the story of *American Gothic* and giving the painting its due. He is legitimately trying to complicate our understanding of the painting, and constantly points out ways in which it may not mean what we think it means.

On the literal level, most people assume that *American Gothic* portrays a farmer and his considerably younger wife. In fact, the models for the painting were Wood's sister Nan and his dentist, Byron McKeeby. Nan claimed that the painting is really supposed to depict a father and daughter, and Wood backed her up on several occasions, leaving *American Gothic* shrouded in ambiguity at the most basic level. As Biel notes, a critic named John E. Seery went so far as to suggest that the female figure may be both daughter and wife to the man. American *Gothic*, indeed! Biel adds that a 1988 horror movie named after the painting used the slogan: "Families that slay together stay together"!

Biel's account of *American Gothic* is structured around what he regards as three stages in the painting's reception, which he labels "iconoclasm," "icon," and "parody." Most of the early commentators on the painting viewed it as satirizing the figures it depicts in the cynical spirit of H.L. Mencken and other sophisticated debunkers of homespun American myths in the 1920s. According to this interpretation, Wood is ridiculing the narrow-mindedness and stern morality of the prim and proper man and woman in the painting.

As Biel writes: "Contemporary viewers saw in the painting an indigenous anti-Puritanism and anti-Philistinism, a native anti-nativism, a cosmopolitan critique of provincialism, a modern send-up of repression."

Wood repeatedly denied that he meant to be critical of the *American Gothic* couple, especially in the face of angry Iowans who charged that he had betrayed his native state by making fun of its citizens. Biel shows that, as the Depression deepened in the 1930s, viewers turned to Wood's painting for an emblem of the qualities of the American people, and, above all, their ability to endure. The very sternness and Stoicism of the man and woman, which had made them seem laughable to the fun-loving generation of the 1920s, became a virtue to victims of the Depression—a tribute to the capacity of the average American to live through the toughest of times. As Biel writes, "The old-fashioned figures, those objects of ridicule among the knowing disciples of Mencken, come to embody an enduring, essential American spirit. No longer anachronistic, they are upright and steadfast, determined to overcome hard times and fearlessly forge ahead into the future. Depression-era viewers do not look down on the man and woman; they look up to them, see their best selves in them."

As we get closer to the present, Biel sees *American Gothic* entering a postmodern hall of mirrors, in which the image is ceaselessly reflected and refracted, splintering into a myriad of meanings. Instead of trying to figure out what the painting really signifies, American popular culture has employed it for a variety of purposes, deliberately severed from anything Wood may have originally meant. Biel argues: "Parody was a signature mode of the 1960s—a vital component of an emerging postmodern sensibility that delighted in the endless recycling of texts and images, a playful 'quotation' and self referentiality, in collapsing distinctions between high and low culture, between the serious and the frivolous." As Biel documents in detail, by now *American Gothic* circulates so freely throughout our culture that we have to remind ourselves that, behind all the parodies and recreations, the cartoons and advertisements, there is an original of the painting still hanging in a Chicago museum.

As Biel neatly sums up the situation today, "Since the late 1960s, it has been much easier to be ironic about the 'original' image than to see the image as ironic."

Biel views the wide range of interpretations and appropriations of *American Gothic* as a tribute to its inher-

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ent value: "Were it not for the painting's aesthetic richness, *American Gothic* would not have opened itself up to a variety of interpretive possibilities, to so much cultural work over the years." This judgment is sound, but it points to the major weakness of Biel's book: the fact that he more or less takes the "aesthetic richness" of *American Gothic* for granted. Although, as a cultural historian, Biel is justified in leaving formal analysis to others, in such a brief book he might have devoted a few pages to summarizing critical appreciation of the painting. Wood himself, at one point, described it as a formal experiment, an exercise in verticality.

As several commentators have stressed, the patterning of *American Gothic* is quite remarkable. The vertical lines of the pitchfork, for example, are immediately echoed in the adjacent stitching on the man's overalls, and inverted in the central gable window that defines the architectural style of the house as what was known as Carpenter Gothic in the Midwest. The window also places a cross between the man and the woman, which resonates with the vertical line of the lightning rod atop the house, as well as the church steeple faintly visible in the left background. Before classifying *American Gothic* with American naive painting and dismissing it, as some hostile critics have done, we need to pay attention to how carefully composed the picture really is.

Biel's book would have been stronger if, among the many contexts in which he discusses *American Gothic*, one of them had been the full range of Wood's achievement as an artist. Biel makes surprisingly few references to Wood's other paintings, and only one of them is reproduced in the book. The result is, unfortunately, to reinforce the mistaken impression that Grant Wood was a one-trick pony, or, more precisely, a one-painting wonder. In fact, Wood's output as a painter was substantial and more diverse in subject matter and style than most people realize. As much as I admire *American Gothic*, I do not think it is Wood's best painting. I prefer his *Midnight Ride of Paul Revere* (1931) which, with its night lighting, dramatic aerial "camera" angle, and uncanny shadows, has a surreal effect, reminiscent of René Magritte—a good reminder that, however American Wood's paintings may be, he remained open to significant influences from Europe.

Even though Biel is writing a book of cultural studies, and not of art appreciation, he should have confronted the issue of Wood's quality as a painter more fully and directly than he does. In his account of the reception of *American Gothic*, he cites at length so many vicious and scathing comments that he leaves his reader wondering what his response to these withering critiques would be. If Wood is as worthless and noxious a painter as so many famous art critics have claimed—and the gamut runs from H.W. Janson to Clement Greenberg to Hilton Kramer—why is Biel devoting a whole book to *American Gothic*, and why does he expect us to take the painting seriously? Biel's book, as a whole, amounts to a defense of the value of *American Gothic*, but he really needed to articulate the principles of this defense better and not leave the critical attacks on the painting unanswered.

Bettmann / Corbis

Grant Wood, John Steuart Curry, 1933

The history of art critics' hostility to *American Gothic* turns out to be instructive, but Biel fails to draw out the lessons it teaches. *American Gothic* was an early victim of political correctness in art criticism. We think of criticizing art works for ideological reasons as a recent development, but "political correctness" is actually a time-honored term among Marxists, and already in the 1930s, they were subjecting art to doctrinal scrutiny. Some of the early attacks on Wood took a form that has become common in contemporary left-wing aesthetic criticism, especially of literature—damning the artist for what he did *not* do, for what his works omit—in this case, condemning Wood for what he did *not* paint. Some critics in the 1930s claimed that Wood was papering over the disaster of the Depression by his optimistic images of the rich farmland of the Midwest, when he should instead have been painting the Dust Bowl and scenes of agricultural strife.

Given the rather genial image most people have of the painter of *American Gothic*, readers may be surprised to learn that Grant Wood was subject to the ultimate charge of the politically correct crowd: He was called a fascist. Evidently, *American Gothic* was a bit too American for some art critics. Precisely because the painting began to be regarded as a national icon, some critics turned on Wood and associated him with various sinister nationalist movements at home and abroad. As Biel notes, Lewis Mumford linked Wood with his fellow Midwestern painter, Thomas Hart Benton, and accused them of representing "the corn-fed Middle West against the anemic East"

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and thus threatening to "become a National Symbol for the patrioteers." Later, in 1943, H.W. Janson (yes, *the* Janson, author of the famous textbook *History of Art*) pulled out all the stops in a tirade against Wood, charging that he was substituting "'Americanism,' i.e. nationalism, for esthetic values of any kind." In a nasty attempt at guilt by association, Janson, a refugee from Nazi Germany, went on to link Wood and his fellow Midwestern painters with the most reactionary developments in European art: "In fact, almost every one of the ideas constituting the regionalist credo could be matched more or less verbatim from the writings of Nazi experts on art."

Biel dutifully reports these negative judgments on Wood, and rightly so, since they are an essential part of the record of his reception. I, for one, take a kind of cold comfort in the realization that academics were already recklessly throwing around the term "fascist" more than half-a-century ago. But it is nevertheless surprising that Biel, at times, appears to endorse these critiques of Wood, and does not feel compelled to refute even the charge that the subject of his book was no better than a Nazi. By contrast, James Dennis, in his *Renegade Regionalists*, documents in detail that Janson was ignorant of Wood's work and that his presentation of the painter's views was distorted.

More is at stake here than one painter's reputation. In a conflict that Biel sketches but does not thoroughly analyze or try to adjudicate, *American Gothic* stood at the flashpoint of one of the great aesthetic debates of the 20th century. Attacks on the work were among the opening salvos in the relentless war of the modernist art establishment against representational painting and in favor of abstract expressionism. In the modernist view, this was a battle between a mean-spirited, narrow-minded regionalism and a generous, forward-looking internationalism. But for those, like me, who are skeptical of the preeminent value of abstract expressionism, the battle could be reformulated as an attempt on the part of a single brand of 20th-century painting to erect itself as the one and only authentic form of modern art, while condemning all alternative visions to the realm of inauthenticity and kitsch, to use Clement Greenberg's favorite term of reproach.

The way Wood functioned as a negative example for the modernist camp in this debate is summed up in a passage Biel quotes from the *Chicago Times* art critic, Fritzi Weisenborn, writing in 1942: "Art is never national but always international in interest and content. Grant Wood's work which hangs in the gallery of honor at the Art Institute contributes nothing scientifically, emotionally, or esthetically to art or society. It is the culmination of a trend of escapist and isolationist thought which was popular with some groups yesterday, but which is definitely obsolete today."

Was Grant Wood a mere regionalist, and does *American Gothic* represent a hopelessly antiquated form of painting, made obsolete by the triumph of abstract expressionism in the works of painters like Jackson Pollock and Willem de Kooning? I cannot adequately deal with these complex questions here, and must refer readers interested in the issues to the Dennis book I mentioned, whose full title is *Renegade Regionalists: The Modern Independence of Grant Wood, Thomas Hart Benton, and John Steuart Curry*, and to Erika Doss's *Benton, Pollock, and the Politics of Modernism: From Regionalism to Abstract Expressionism*. These two books appear to be among Biel's chief sources, and show in much greater depth what was truly at stake in the reception of *American Gothic*. They are serious and sustained efforts to rethink the history of 20th-century art, and to consider whether the triumph of abstract expressionism was as inevitable and progressive as many art historians have claimed.

I will offer on my own a brief defense of Wood as a "regionalist" painter who may yet be regarded as modern (if not modernist). Like many artists in the first decades of the 20th century, he made his obligatory pilgrimage to Paris in the 1920s, and was overwhelmed by Impressionist and Post-Impressionist art. He returned to America and started to produce a series of highly derivative paintings, including the requisite homage to Van Gogh, with a composition called *Old Shoes* in 1926. But Wood eventually decided that, if he wished to be an American painter, he could not go on copying European models slavishly. In his writings on the subject, he presents this as an issue of colonialism, and he sought to become free in his art from European domination. (Although not free from all European influences; as many critics have noted, *American Gothic* is heavily indebted to the work of Hans Memling, which Wood saw during a visit to Munich.)

Wood's turn to distinctively American subject matter, and especially the distinctively American landscape of the Midwest, was an attempt to carve out a distinctively American place for himself in the history of art. One might, in fact, turn the tables on Wood's politically correct critics and point out that, in one respect, he seems quite fashionable in contemporary terms: He can be viewed as a postcolonial painter—an artist who wanted to escape the iron grip of his European heritage, and sought inspiration in his native soil to do so.

This would put Wood in good company. His work, together with that of fellow "regionalists" Benton and Curry, can be linked under the postcolonial rubric with that of the Mexican muralists, Rivera, Orozco, and Siqueiros, as well as with that of several "regionalist" female painters, like Georgia O'Keeffe (American Southwest) and Emily Carr (Pacific Northwest). Like Carr, other distinguished Canadian painters, including Lawren Harris and his fellow members of the Group of Seven, could also be classified as "postcolonial regionalists," along with several Australian painters, such as Russell Drysdale. All these painters felt that the way to be truly modern was to draw upon European techniques but to use them to represent the distinctive reality of the new lands in which they lived.

This representational painting looks reactionary from the perspective of the standard narrative that sees all 20th-century art as moving inexorably

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toward the triumph of abstraction, but it looks quite progressive from the perspective of painters all around the world who were trying to find ways to advance the cause of art by adapting European techniques of painting to their local circumstances. This "regionalism" actually became a source of strength for these painters and accounts for the way they maintained links with a broader public, even as they lost the favor of the elite art establishment.

As Biel shows, whatever else one may say about *American Gothic*, it has spoken to the American people and been embraced by them in ways that have eluded thousands of abstract canvases, for all the favorable publicity and promotion they received from art critics. High Modernist critics like Greenberg attribute Wood's success to the ineradicable American taste for kitsch. Such critics actually seem to hold the popularity of *American Gothic* against it: If the masses like the painting, then there must be something wrong with it. But perhaps the popularity of *American Gothic* can teach us something: that Americans take a special interest in a work of art that seeks to represent something distinctively and recognizably American.

And is there anything wrong with this, or anything peculiar to the American public or American artists? Vermeer was a Dutch "regionalist," who painted Dutch subjects for Dutch customers. Many of the great European artists could be described as regionalists. It was only the promoters of abstract expressionism who managed to turn "regionialism" into a dirty word and condemn artists as parochial simply because they wanted to root their art in the concrete world with which they were familiar. (Something artists have been doing since the cave paintings of Lascaux, an early example of "French regionalism.")

Is it really true, as we saw Fritizi Weisenborn claim, that "art is never national but always international in intent and content"? There was nothing "international" about Vermeer's art in his own day; his subject matter and appeal barely reached the national level. If we no longer regard him as a "regionalist" today, the reason is that the development of an international art market, and an international network of museums, has lifted Vermeer out of his original local context. Nevertheless, his paintings remain as identifiably Dutch as Delft china or Edam cheese—though, of course, of much greater artistic merit. It is abstract expressionism that is anomalous in the history of art, not Wood's regionalism.

I am not trying to claim that Grant Wood was as great a painter as Johannes Vermeer—only that the mere fact that he can be described as a regionalist does not mean that he was not a true artist, or that he had nothing to contribute to the development of 20th-century painting. The key to reinterpreting the history of modern art may turn out to be a renewed appreciation of the artists whom High Modernist critics were eager to pigeonhole and dismiss as mere regionalists.

In the end, when I search for an explanation for the success of *American Gothic*, I look to the title. We have become so familiar with the name of the painting that we forget how suggestive it is and how pregnant with meaning. The title stations the painting in place and time, evoking a national context and a specific period style. Indeed, the name conjures up the very idea of regionalism, almost as if Wood were filing the painting under an art-historical category: "What is this painting? It is American Gothic."

The title, thus, points away from the demands of High Modernism—this is not going to be an "international" painting but an American one, and it is not going to break completely with artistic tradition, but will somehow be related to the historical concept of the Gothic. In short, this is a painting that will not seek to abstract from geography and history. It will, instead, derive its power from being rooted in a specific place and a specific artistic tradition. And the hybrid nature of the title—its almost oxymoronic character—points to what is central in Wood's achievement as an artist. (As for Wood himself, as an oxymoron, Lincoln Kirstein once referred to him as "an Iowa Memling.")

Wood seeks to produce the paradox of an *American* Gothic, to combine the best of the New and the Old Worlds—a synthesis he found adumbrated in the quaint house that inspired the painting and led to its name. The quest to bring together the American and the Gothic in this particular painting is emblematic of the course of Wood's career in general. He sought a way to be a recognizably American painter without wholly rejecting European artistic traditions. Indeed, he sought a way to develop a distinctively American style by drawing upon European traditions, while at the same time trying to advance those traditions by freshly applying them to the new subjects available on American soil. ♦

Corbis / Douglas Kirkland

Bob Hope and friend, 1981

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Eminent Edwardian

Letters that illuminate Lytton Strachey's life.

BY STEPHEN BARBARA

The title of this book is so misleading, you might applaud it for sheer nerve. *The Letters of Lytton Strachey*? Some of them, yes, but a true collection of Strachey's letters would require six volumes. The man who wrote with the brevity and wit of a Condorcet in his great critical and biographical works was a voluble correspondent.

Editor Paul Levy has had the difficult task of selecting the best of these letters and presenting them in a single volume. This he has done cynically, choosing the letters most appealing to the Bloomsbury enthusiast's love of high camp and malicious gossip, while omitting the bulk of the correspondence relating to Strachey's works, particularly his masterpiece, *Eminent Victorians*. In that book, Strachey parted ways with the panegyrics of the day, instead exposing the hypocrisies of his subjects in a superbly detached style. The underhanded jibe was typical: "It was only when the offer of a Merton Fellowship seemed to depend upon his taking orders that Cardinal Manning's heavenly ambitions began to assume a definite shape."

Lytton Strachey, 1910

Hulton-Deutsch / Corbis

The Letters of Lytton Strachey
Edited by Paul Levy
Farrar, Straus & Giroux, 698 pp., $40

The same gift for ridicule is on display here, only amplified. Writing to his friend and Cambridge contemporary, Leonard Woolf, Strachey skewers John Maynard Keynes in a grand series of rhyming couplets: "A eunuch with his fly-buttons undone;/ A puzzle that is plain to everyone." Later, Keynes is derided as "a malignant goblin gibbering over destinies that are not his own." Rupert Brooke, then a love interest of his brother James, is "poetical and pseudo-beautiful" and "proposes a philosophy of quietude and general mist." But no one gets it worse than E.M. Forster, whose novel *The Longest Journey* is "a good deal worse than the last, and certainly contains things infinitely more foul. . . . The morals, the sentimentality, and the melodrama are incredible, but there are even further depths of fatuity and filth."

Not to say Strachey was smug. In letter after letter, we see him sharing his quirks and frailties with his correspondents, not so much in a tone of despair as of wry amusement. Frequently in poor health, he diagnoses his ills with the studied care of a hypochondriac: "I've been attacked by violent hay-fever, which I feared would develop into apoplexy," he writes in one bleak moment. (In fact, Strachey was passed medically unfit during World War I after unsuccessfully claiming exemption as a non-absolutist conscientious objector.) Poverty, too, is a persistent theme, as in the letter to his mother where he asks her to deposit £10 into his bank account. Aware of his many contradictions, both sexually and intellectually, he wonders to his brother James whether he is "an utter fool, a genius, or an ordinary person." He was all three, and more.

Agonies brought on by his love affairs also feature heavily in these letters. Writing to Woolf (the most written-to friend in this collection), he imagines his first cousin Duncan Grant, then his lover, running off with his brother James: "If it happens, I only know one thing more—that I shall crumple up." When Duncan does eventually leave him, for Maynard Keynes, the letters strike a desperate note.

Some of the letters here are calculated to shock, and shock they do. Writing to Virginia Woolf in 1912, he looks back at the Victorians and asks: "Is it prejudice, do you think, that makes us hate the Victorians, or is it the truth of the case? They seem to me to be a set of mouthing bungling hypocrites." He then predicts that the literature of the future will "at last tell the truth, and be indecent, and amusing, and romantic." In the future, yes, but Strachey was already obscene in his own correspondence.

Of special note are the letters to the publisher Roger Senhouse, Strachey's last boyfriend. These clearly reveal that the two were carrying on a sado-masochistic relationship, with Strachey playing the role of masochist. In one 1930 letter to Senhouse, he describes the aftermath of a

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harrowing mock crucifixion that had taken place the night before: "A ticklish business, applying the lanoline—but your orders had to be carried out," he writes, proof that he could match shocking words with actions. Levy refers to this relationship as "the last secret of the Bloomsbury group." One can hope.

Inevitably, Strachey's relationship with the painter Dora Carrington will be most interesting to readers who've seen the 1995 film *Carrington*, which captured one of the oddest love stories of the 20th century, the homosexual Strachey and the virginal Carrington bound platonically—and, on one occasion, more than platonically. That correspondence is well-represented in these pages.

But the most interesting letters in this book are the ones that shed light on the Modernist movement, for it is too easy to forget, when reading the frequent banter and gossip in his correspondence, that Strachey was a pioneer who lived in exciting, inventive times. Flushed with the consciousness that a brave new world was replacing its Victorian predecessor, he writes to classmate Leonard Woolf in 1902: "We are the mysterious priests of a new and amazing civilization. . . . We have abolished religion, we have founded ethics, we have established philosophy, we have sown our strange illuminations in every province of thought, we have conquered art, we have liberated love." He had recently read G.E. Moore's *Principia Ethica*, and knew Freud's work.

Levy has done a fine job annotating these letters, but one wishes he had included more that shed light on Strachey's work. The introduction, which lacks any serious discussion of Strachey as biographer and critic, is equally unsatisfying. Of course, Strachey himself knew that "for one reader who cares to concern himself with the intrinsic merit of a piece of writing, there are a thousand who are ready to explore with eager sympathy the history of the writer." Which shouldn't mean that one reader ought to be neglected. ♦

False Start

How the New Left handicapped the civil rights movement. BY ERIC J. SUNDQUIST

Winning the Race
Beyond the Crisis in Black America
by John McWhorter
Gotham, 434 pp., $27.50

In his iconoclastic *Losing the Race: Self-Sabotage in Black America* (2000), the black linguist and social critic John McWhorter identified a trio of pathological behaviors—the Cult of Victimology, Separatism, and Anti-intellectualism—that have kept African Americans "mired in a detour" on the road to equality. It is no longer discrimination that stands in the way of black success, he argued, but an ethos typified by welfare and affirmative action that has encouraged blacks to see themselves as perpetual victims and to participate in their own ruin.

Readers acquainted with *Losing the Race* or the essays collected in McWhorter's *Authentically Black* will find a good deal that is familiar in this new book, *Winning the Race*, which once again seeks to replace the alibi of "racism forever" with renewed commitment to equal opportunity and individual responsibility. As in his earlier books, McWhorter documents the detrimental assumptions he finds governing too much of African American life: "Real" black identity derives from the ghetto; multigenerational single motherhood is a matter of lifestyle, not shame; studying hard is "acting white"; liberation lies in giving The Man the finger. Partly as a result of McWhorter's influence, black criticism of such assumptions has become more frequent. In the past year, for example, Bill Cosby has been both lionized and demonized for publicly condemning various nihilistic features of inner-city black culture.

What McWhorter adds to his own condemnation in *Winning the Race* is a beguiling thesis and a historical explanation. The thesis is that idealistic oppositional stances born of civil rights militancy degenerated over time into self-replicating habits of "therapeutic alienation," mindlessly reinforced by academics, journalists, and popular culture. The historical explanation is that these habits are the inheritance of black America's encounter with the New Left in the 1960s, which transmuted white activism into institutionalized guilt and instilled in blacks reliance on economic assistance, preferential treatment, and bromides of self-esteem.

Winning the Race is effectively, though not always to its benefit, several books in one. One strand of argument rebuts conventional wisdom about the causes of black poverty—or, rather, the "culture of poverty," since the myth exceeds the reality—and maintains that the precipitous expansion of Aid to Families with Dependent Children played a more instrumental role in modern black life "than Afros, Nixon's Southern Strategy, or [Martin Luther] King's death." Another strand attacks the glamorization of gang life, incarnate in the brutality and misogyny of hip-hop music, while at the same time contending that hypersensitivity to lingering racism leads middle-class blacks to adopt postures of "rage" that mimic those of the underclass. And still another aims to discredit the remnants of affirmative action, most evident nowadays in the seemingly apple-pie notion

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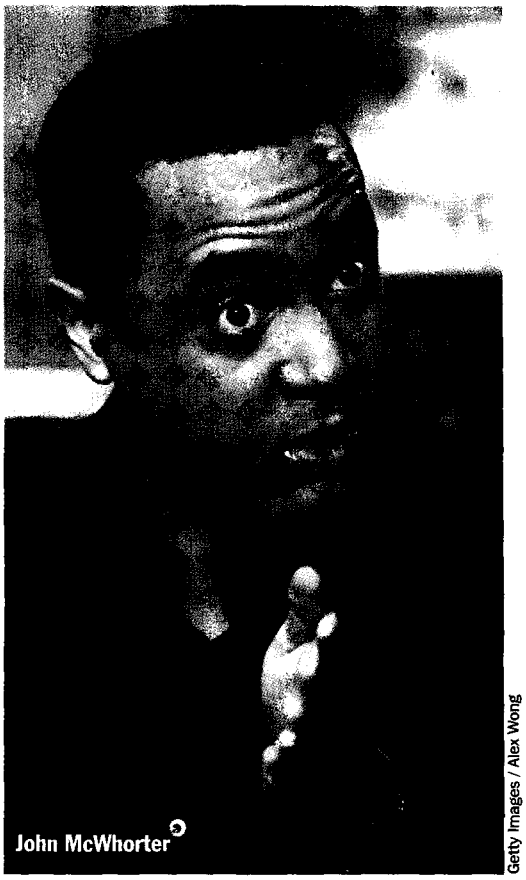
John McWhorter

Getty Images / Alex Wong

of "diversity," which substitutes differences in ethno-racial group membership for differences in experience and belief.

McWhorter moves deftly among these arguments, but he has a hard time tying them together. A repetitious mix of punditry and scholarship, his book covers a lot of ground but seldom goes deeply into any one topic. In answer to those who contend that the loss of factory jobs, middle-class flight, or decaying housing projects are to blame for an entrenched "subculture of depravity," for instance, it is not sufficient to offer the single counterexample of Indianapolis, where such factors were far less evident but a comparable post-1960s escalation in crime, unemployment, and single-parent families occurred. McWhorter may be right that a mindset of enervating dependence (inspired by government fiat) and self-righteous resistance (inspired by countercultural rebellion) were more to blame, but only those who already believe him are likely to be persuaded by his rather selective use of evidence.

A greater problem arises from the fact that, although he complains that blacks have lost track of the events and decisions that produced today's dilemma, McWhorter's own historical explanation is, in key respects, not historical enough.

Insofar as he believes that the 1960s created a better America for many, including the black middle class, McWhorter does not make adequately clear how intertwined the civil rights revolution was with the countercultural revolution. Each devolved into excess—Black Power radicalism in one case, ingrained antagonism toward The System in the other—and that devolution certainly helped breed the "bone-deep animus" against bourgeois values he detects in youth and academic culture alike. However, even if such animus was a byproduct of the white left's supposition that blacks were not yet "whole people," it is simplistic to contend that the "hippie ethos" crossed the color line to "turn black America upside down."

In explaining the beginnings of therapeutic alienation, McWhorter takes note of the perennial popularity of *Black Rage*, a 1970 trendsetter that dwelled on the psychological "damage" done to blacks by racism. But *Black Rage* cannot be traced to Woodstock or the Weathermen. Theories of racial damage may have become normative during the 1960s—Lyndon Johnson's 1965 address at Howard University, in which he spoke repeatedly of blacks as "crippled" by racism, became a touchstone for proponents of affirmative action—but they originated at least two decades earlier.

The post-World War II consensus that racist attitudes, not racial traits, create inequality, coupled with the innovation that African-Americans were victims of a generations-long "genocide," soon established the further consensus that blacks were a traumatized people. The essence of the damage doctrine was stated in 1954 by the black sociologist Kenneth Clark, whose views were instrumental in *Brown* v. *Board of Education* that same year. "No nation can afford to subject groups of individuals to the psychological crippling and distortion which are the consequences of chronic racism," wrote Clark, and those consequences will be felt not only by the victims but also by the "dominant or privileged groups."

In other words, both blacks and whites, as groups rather than simply as individuals, were damaged by racism, and therefore compensation and debt, like suffering and guilt, were destined to go hand in hand for decades to come. Because the end of outright injustice shifted attention to the subtler effects of "structural" or "subliminal" racism, jurisprudence and public policy, from *Brown* to *Bakke* and beyond, were strongly compelled to keep steering from equality of opportunity toward equality of outcome.

Equality of opportunity, which requires risk, permits failure and is virtually impossible to quantify; equality of outcome eliminates risk and seems eminently quantifiable. But like the notion of damage and debt on which it is based, the quest for equal outcome, because it is utopian, has no limit. Although McWhorter addresses the contemporary reparations movement only in passing, it provides a good illustration. The exact cost of removing blacks from dependence on others, says the National Coalition of Blacks for Reparations in America, remains to be determined: "Once we know how much damage has been done to us, and what is required to repair the damage, we will know how much is owed."

Alongside the stereotype of blacks as damaged, McWhorter identifies an equally disturbing stereotype purveyed in the marketing of ghetto youth culture as the essence of black identity. In view of its celebration of violence and the pornographic degradation of women, McWhorter rightly wonders how hip-hop music, pardoned by its defenders as "progressive" and "counterhegemonic," can be a force for freedom rather than despair. All the same, glorification of the black "gangsta" could not survive absent a massive

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mainstream audience. Here, too, a more nuanced historical argument is in order.

So intimate is the entanglement of white and black culture, especially in music and vernacular language, that America itself has long been significantly "black," a point made many years ago by James Weldon Johnson and Ralph Ellison, among others. From ragtime to rap, white musicians, patrons, and entrepreneurs have fed on black culture, adopting the voices of the dispossessed as their own. And in the polyglot of everyday American English, no strain is more influential than black slang. Indeed, McWhorter himself has written brilliantly of these issues in his previous books *The Word on the Street* and *Doing Our Own Thing*.

More to the point of his thesis about alienation, however, the white counterculture's renegade dissent from propriety was significantly responsive to black culture. Taking Norman Mailer's notorious Beat-era paean to the "white Negro" in a more anarchic direction, to give just one example, Jerry Rubin extolled a revolutionary alliance between the Black Panthers and the Yippies: "The pigs fired the first shot. But we, the white and black niggers, will fire the last." In this respect and others, black marginality and protest inspired the white counterculture, not the other way around. Both, moreover, were expressions of American-style Marxism, dormant since the 1930s but reborn in the New Left's devotion to anticolonialism both abroad and at home.

McWhorter's account is not wrong but partial, and he is thus left with an incomplete diagnosis of post-civil rights trends. If black pride, and even Black Power, were legitimate reactions to decades of abuse, as he admits, how did militancy become a permanent identity and—be it Malcolm X or Tupac Shakur—a commodity sold worldwide as the epitome of American culture? Could it be that the nation craves outlaws as much as it craves law and order? If so, the most insidious result of the 1960s symbiosis was to embed the perception of black deviance more securely at both the bottom and the top of the American economy. Whether in the arts, athletics, or fashion, what is the image of the black "thug," as mesmerizing as he is menacing, but a strange hybrid of American socialism co-opted by American capitalism?

Even though many blacks reflexively condemn such images, notes McWhorter, the culture that produced them has flourished in tandem with unprecedented black economic and professional success, a fact personified in the figure of the gangbanger turned music mogul. This paradox is reflected in others. Whereas racism diminished dramatically over the last decades of the 20th century, the cultivation of black insularity—it's a "black thang," you wouldn't understand—seemed to increase inversely. Whereas diversity sidestepped the stigma of quotas, it begat new kinds of tokenism and new kinds of structural and subliminal racism.

Martin Luther King once lamented Black Power's debilitating belief in the "infinitude of the ghetto"—the belief that there can be no end to the inequities caused by racism and therefore no end to the need for government intervention, if not insurrection. No one knows (though everyone thinks he knows) what King, had he lived, would have thought about affirmative action, reparations, school vouchers, and other hot-button issues. It is likely that he would have supported compensatory measures that were temporary, not permanent; it is certain that he would have continued to reject the culture of black alienation. King's passion for communal justice was immense, but so was his passion for personal initiative.

McWhorter's case for "winning the race" would have been stronger had he taken greater account of such questions and grappled more strenuously with both the sources of today's crisis and its sustaining paradoxes. But the ardent case he does make, as classically liberal as it is conservative, is nonetheless challenging and bold. ♦

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Latin Lover

A new translation brings life to Catullus.

BY J.E. LENDON

Catullus, best beloved of the Latin poets, is happy to have found a friend in Peter Green. Acclaimed as a *belle-lettrist*, justly celebrated as an English stylist, a seasoned translator of ancient poetry, and an eminent ancient historian, Green also brings to Catullus a passionate sympathy for the poet of love and hate.

When Peter Green was a youthful soldier, he served, persistent rumor insists, as the model for the irresistible Guy Perron in Paul Scott's *The Jewel in the Crown.* In his late thirties Green published a historical novel called *The Sword of Pleasure*, and in his fifties, a translation of Ovid's erotic poems. Nearing seventy, after many desiccating years as a professor of classics in Texas, he nevertheless brought forth *The Laughter of Aphrodite*, a fictionalized life of Sappho. But Green is a familiar of Mars as well as Venus, a fierce and witty controversialist, a reviewer of lively renown: His knockabout battle in print with Victor Davis Hanson over the future of classical scholarship in America was savored even by the most jaded connoisseurs of classicists' invective.

The Poems of Catullus
translated by Peter Green
California, 360 pp., $24.95

Green's edition of Catullus is bilingual—Latin on the left and English on the right—with a pointed introduction before and plump notes behind: The admirer without Latin and the classical scholar both get their due and never feel each other's elbows. The translations do not censor Catullus' language—as late as 1961, 32 of the little more than a hundred surviving poems were still considered too improper for students, even in Latin—but Green does not pander and drool, as was common at the height of over-reaction to the old prudery. Catullus can be as direct as a diamond-drill bit or as allusive as a flight of swifts. Green's notes deftly explain the obscurities of the poems, but they are far more than crutches, and much of the joy of the book lies in reading the notes straight through to enjoy the carnival of Green gleefully whacking down Catullus scholars past and present.

As an interpreter of the poems, Green is proudly old-fashioned, dismissing those who deny that Catullus' lover, who travels under the famous codename "Lesbia," was in fact the fascinating slut Clodia, the Paris Hilton of the age of Cicero. Nor has he patience for modish theories that Lesbia, and the poet himself as he appears in the poems, are mere literary fictions. To Green, Catullus is the most honest and immediate of all the Latin poets, his emotions as pure as the flash of a leaping trout.

In the past, translations of Latin poetry tended to come in three types. Highly literal translations—"trots" or "cribs"—were prepared for the help of students, following the syntax of the Latin by doing violence to English, and tending to sound rather like an understudy for Yoda: "The sparrow dead is of my girl" (poem 3). Frequently those who translated Latin into English poetry were ambitious to be taken as poets in their own right, strayed far from the original, and employed the English meters, the poetic conventions, and the damnable fustian of their day:

Alack! O thou Loves and Cupids rare,
And such wights as mayhap do dare:
Slain is the sparrow of my fair!

I satirize. But often the most useful translations were into flat, grammatical, English prose, like G.P. Goold's *Catullus* (1983):

Mourn, you Venuses and Cupids,
and all the lovers that there are!
My sweetheart's sparrow is dead.

Catullus has been more fortunate than most Latin poets, with excellent contemporary verse translations by James Michie and the literal Guy Lee. But attempts to draw closer than they dared to the sound of the Latin have been discouraged by the appalling spectacle of C. and L. Zukofsky (1969), whose efforts to reproduce the noise rather than the sense of Catullus in English rendered *fama loquetur anus* ("ancient fame will tell," poem 78B) as "fame will liquidate your anus."

Catullus wrote in a vertiginous mix of colloquial Latin and high poetic diction, and so Green translates him, while wisely avoiding the excesses possible in English: no "eftsoons" or "forsooth," but no pathetic panting after hipness, either. One never feels that the sparrow walks in peril of being addressed as "dude." Yet Green also seeks to revive the sound and rhythm of Catullus' original Latin meters. The "dancing, perky" hendecasyllable, Catullus' favorite measure, is an 11-syllable line that starts slow and sounding with long syllables, speeds up sprightly with short, and then slows down again with a mixture of long and short: dum—dum—dum—diddle—dum—di—dum—di—dum—dum.

In Catullus' own hendecasyllables the sparrow dies like this:

passer mortuus est meae puellae
passer, deliciae meae puellae

Compare, and admire, Green's metrical translation:

Sparrow lies dead, my own true sweetheart's Sparrow
Sparrow, the pet and darling of my Sweetheart

Sometimes the harsh necessities of English thwart Green's hopes, but

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often Green's success with meter is striking, as in poem 63, in galliambics, a jostling of short syllables with a drum roll of shorts at the end of the line:

> *Over deep seas Attis, carried on a rapid catamaran,*
> *eagerly with hurrying footsteps sought that forest in Phrygia,*
> *penetrated the tree-thick coverts, the goddess' shadowy habitat . . .*

Here Green's metrical triumph takes him further than usual from the Latin, but in straining for effect, Green is faithfully imitating Catullus' display of his own virtuosity, for galliambics are even harder in Latin than in English. For the most part, Green handles his Latin meters so nimbly that the reader does not consciously notice them at all: They work upon the reader's subconscious, just like Shakespeare's blank verse when properly spoken.

The most obvious parallel to Green's Catullus is A.J. Woodman's fascinating translation of *The Annals of Tacitus*, where he labors not just to render Tacitus' words but also to reproduce in English the effect of Tacitus' sounds and artful wordplay on the Roman reader:

> As for the man himself, he would approach municipalities when it was dark, nor was he observed in the open or for too long in the same places but—because veracity is validated by vision and delay, deceptions by dispatch and uncertainties—he was always abandoning the reports of himself or anticipating them.

Green's and Woodman's is a new way of translating Latin. When words but also rhythms are rendered into English, the magic of Latin is heard again in a fallen world. A bridge is thrown over the chasm of language for the reader without Latin, and the reader with Latin has his love of Latin fired again. ♦

Books in Brief

***A Left-Hand Turn Around the World: Chasing the Mystery and Meaning of All Things Southpaw* by David Wolman (Da Capo, 236 pp., $23.95).** David Wolman's first full-length piece of pop-science is a book reviewer's quandary: a well-researched, well-written work that is simply not worth reading. Had Wolman stuck to his usual forums (*Newsweek*, *Science & Spirit* magazine), his exploration of left-handedness would have made for a delightfully quirky essay. Somewhere between pages 10 and 212, however, Wolman's work loses its novelty value and turns into a sleep-inducing muddle of a book.

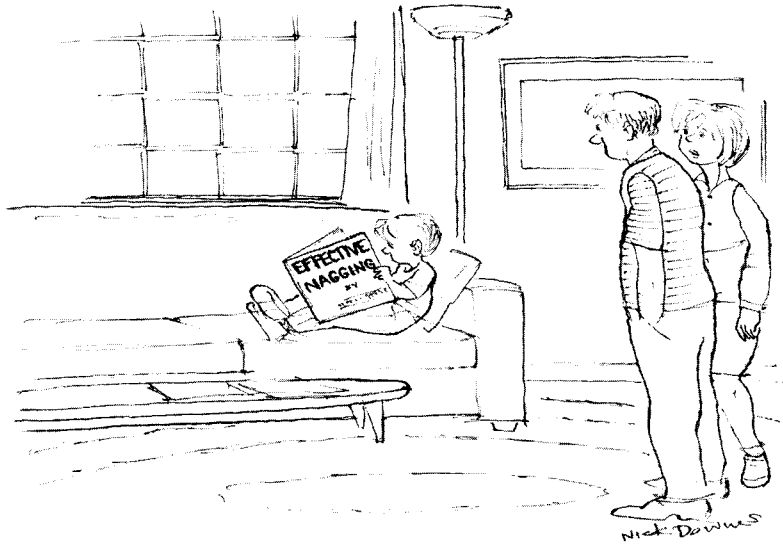
This is not to say that it has no positive attributes. Having conceived of the idea to traverse the globe in contemplation of the southpaw mystique, Wolman cannot be faulted for lack of creativity. His search takes him from Tokyo University's School of Medicine to the blink-and-you'll-miss-it town of Left Hand, West Virginia. One wants to be as enthusiastic about this voyage as the author, but Wolman's zany idea veers toward the soporific in practice.

The book's discussion of various genealogical and environmental theories of hand preference is tedious. What's more, the theories themselves are so numerous and conflicting that they call the value of Wolman's entire exercise into question. At the book's end, the reader will likely have trouble distinguishing Marian Annett's "Right Shift Theory" from Robert Sainburg's laterality research from Bill Hopkins's work with chimpanzees. While each of these theories is interesting in its own right, the way Wolman jumbles them together makes them nearly incomprehensible.

While Wolman is dry in his treatment of the science behind his subject, he shines when examining left-handedness from a sociocultural perspective. One highlight of the book is his meeting with the lefty Diabolos Rex, "self-appointed Devil King" and Megister Templi for the Church of Satan. With 4-inch Teflon horn-shaped implants in his forehead, Rex provides humorous insight into the historical correlation of the left-handed with the sinister. Had Wolman spent more time on similar endeavors, and less time mired in scientific jargon, his book might have been more readable.

A southpaw myself, I want to like Wolman's book. He is a seasoned writer, with a unique, self-effacing style that almost makes up for his subject matter. Therefore I praise Wolman for his study of left-handedness, a mix of academia and hokum that would have made a lovely magazine article.

—*Abigail Lavin*



"At least he's reading."

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Iranian President Mahmoud Ahmadinejad . . . can talk a language most ordinary Iranians understand. —NPR

Parody

Dear Mahmoud

The Advice Column Ordinary Folks Understand

DEAR MAHMOUD: Your foreign minister recently told Europeans you didn't mean it when you said you wanted to wipe Israel off the map. What gives?

—Confused in Qum

DEAR CONFUSED: **I phrased things poorly, which led certain people to get upset. By "wipe," I simply meant kill the non-Muslim population. Sorry I was vague!**

—c—

DEAR MAHMOUD: I have a soft-spot for grenades, but I get much grief about it. I just like them, and they're for peaceful uses only.

—Gun-Lover in Bam

DEAR GUN-LOVER: **I totally understand. Don't give up your passion. And sometimes the only way to make others appreciate your art is by showing off the finished product.**

—c—

DEAR MAHMOUD: I hear you're sponsoring a conference on the Holocaust. What's on the agenda?

—Bookish in Birjand

DEAR BOOKISH: **As you know, there's a longstanding debate between the "functionalist" school and the "intentionalist" school on this subject, although some have worked out a synthesis of the two. We hope our conference will rise above this debate and draw more on the "What Holocaust?" school.**

—c—

DEAR MAHMOUD: I like nuclear power as much as the next guy, but why can't we do this deal with Russia, where they enrich the uranium for us so we don't build a bomb?

—Timid in Tabriz

DEAR TIMID: **Have you ever tried McDonald's fries? They are excellent, and I say this as someone who plans to eliminate the United States. To be sure, McMullah's here makes a fine version, but there's no substitute for the original. Similarly, only home-made enriched uranium has that special tang our reactors prefer.**

—c—

DEAR MAHMOUD: I keep having trouble with my soufflé. In the oven it looks fine, and then it just collapses the minute I take it out. Help!

—Shaken in Shiraz

DEAR SHAKEN: **You can try lowering your oven temperature by 25 degrees, but I'm afraid this is mainly the work of the Zionists.**

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In the new issue of *Policy Review*

The Roots of Democracy

Equality, inequality, and the choice of political institutions

Generally speaking, democracy will be possible only if both winners and losers—that is, if all voters and their representatives—live under some relative equality of conditions. When voters do not differ excessively in wealth among themselves, not much is up for grabs in elections. Democracy is then a quiet business, feared by few and welcomed by most. By contrast, if social and economic inequality is rampant—that is, if a few control most wealth—the majority will look forward to an election as an event whose outcome will enable them to redistribute heavily to themselves. Facing such strong pressure for redistribution, the wealthy will prefer an authoritarian regime that would exclude the majority of the population and hence block the introduction of high, quasi-confiscatory taxes.

—Carles Boix

The Politics of Personal Self-Destruction

Stevenson and McCarthy as anti-leaders

Do anti-leaders create "anti-followers"? I think in answering this question we may find the key to the anti-leader: He is born to be martyred or to give the appearance of a permanent progression to his own crucifixion, which he accepts as warranted, just as Kafka's Joseph K. accepted his fate. The more he is denounced and betrayed, the more he is humiliated and the more he feels his vindication; the more he feels his vindication, the more he arranges his defeat. McCarthy could never understand why people he had pilloried or whose careers he had destroyed disliked him or would not shake his hand. And Stevenson wondered aloud why and how he could work for somebody who never said "please" or "I'm sorry."

—Arnold Beichman

Paid for by the Hoover Institution, Stanford University

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